Supreme Court, U.S.
FILED

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No. _____

In The

Supreme Court of the United States

AUGUSTUS SIMMONS,

Petitioner,

vs.

SUPREME COURT OF CONNECTICUT,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Connecticut

PETITION FOR WRIT OF CERTIORARI

AUGUSTUS J. SIMMONS
P.O. Box #1
Windsor, CT 06095
(860) 569-6714
Owner-Title Holder

FEDERAL QUESTION

Pursuant to Rule 10(b)(c) when a state court of last resort has decided an important and special question of Federal Law in a way that conflicts with applicable decisions of this court where federal law is controlling in the "taking" of airport related on-the-ground real property by the United States Government (F.A.A.) as INVADER-APPROPRIATOR-DICTATOR-PERPETRATOR who – never – paid, offered, or deposited one (1) dollar compensation for over four (4) decades of possession and use; relying on "LEASES" from the trespasser State Transportation Authority (sponsor) who under P.L. 91-646 (1970) (42 U.S.C. § 4628) was acting as agent for a federal program and the agent, after two (2) null and void condemnation attempts and reverting of ownership by the courts has not initiated any mesne proceedings, since reversal, in any state or federal court, for subject matter jurisdiction; has not made any mandatory appraisals or valuations as a prelude to establishing fair and just compensation; who acted in a conspiratorial, collussory, tortious manner with Plaintiff's counsel to disrupt, manipulate both Federal and State Court records to deny Plaintiff/Owner a "DAY IN COURT" on DAMAGES where court costs, attorney and engineering fees were substantial – and reimbursable under Federal and State Law – and continuing; where *AFTER* Plaintiff/Owner refused to entertain a "VERBAL OFFER" or tender any deeds without one single hearing to address damages or ascertainment of just compensation – where a Federal Project is at issue – resulted in the legal withdrawal from representation of the Owner's court actions by private counsel on April 19, 1978 that did not curtail or end the tortious acts of discharged and withdrawn counsel putting

FEDERAL QUESTION – Continued

attachments on the land records, acting as self-appointed judge and sheriff who legally could not, did not give notice or service to all interested and necessary parties and where there is [NO RECORD] of a return of service to the court of original jurisdiction (Superior), NO docket number for subject matter real property; which venue is in Hartford County, State of Connecticut, in the United States of America and not the West Bank or Gaza Strip and where there was never a hearing before or after the attachment of a quarter of a century ago that is in conflict with a decision of this Supreme Court in *Connecticut v. Doehr*, 111 S. Ct. 2105 (1991) which emphasized the importance of providing a prompt post-deprivation hearing at the very least.

Under Federal Question the usual rule, with [several] cites supporting, is that if the United States has entered into possession of the property prior to the acquisition of Title, it is the former event which constitutes the act of taking. It is that event which gives rise to the claim for compensation and fixes the date as of which the land is to be valued and the Government's obligation to pay interest accrues. *United States v. Dow*, 357 U.S. 17, 21, 78 S. Ct. 1039, 2 L. Ed. 2d 1109.

Under Federal Question where the lack of jurisdiction, not only of the parties, but of the subject matter was put before the court of first jurisdiction (Superior), not only by the Owner but by the Attorney General's Office representing the STATE, BEFORE and AFTER the State Supreme Court decree under Plaintiff/Owner's tort action (*Simmons v. Wetherall*), 180 Conn. 587 that is in conflict with the applicable decision of this court announced in *Standard Oil Co. v. Missouri*, 32 Sup. Ct. at 409 (1911) declaring

FEDERAL QUESTION – Continued

that 'If the action be for a libel or personal tort, the court cannot order in the case a specific performance of a contract.' Such decrees would be absolutely VOID, because the court, in rendering them, would transcend the limits of its authority in those cases. *Windsor v. McVeigh*, 93 U.S. 274, 282, 23 L. Ed. 914, 917. See also *Reynolds v. Stockton*, 140 U.S. 265, 268, 35 L. Ed. 467, 469, 11 Sup. Ct. Rep. 773.

Under Federal Question where the decree of the court of last resort of the State of Connecticut must be declared VOID under the Constitution of the United States, the Fifth and Fourteenth Amendments of the Constitution, the Due Process Clause of the Fourteenth Amendment and the relief requested is the Federal Agency (F.A.A.) who has a history and policy of negotiating "20 year LEASES" in lieu of acquiring TITLE in fee simple, as evident at several airports in the northeast region, negotiate "LEASES" from the Owner and not the Trespasser to continue the servitude imposed against the Owner – without any compensation consideration, whatsoever, for in excess of four (4) decades.

Under Federal Question where the Owner remains saddled with several lien-holders, who must be cleared off the land records per C.G.S. § 48-21, before the Owner is entitled to any just compensation, and, the adversaries admit, acknowledge, concur with the statement of Attorney Walter Bass on June 7, 1982 before Hon. Dupont, A. in Superior court that no notice, service of process was ever made on the attorney or his clients, mandates the setting aside of the Connecticut Supreme Court decree 180 Conn. 587, made without any process before any court in this United States.

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OPINION BELOW

SUPREME COURT

STATE OF CONNECTICUT

NO. PSC-04-0374

State of Connecticut

v.

Augustus J. Simmons

ORDER ON PETITION FOR CERTIFICATION TO APPEAL

On consideration of the petition by the defendant for certification to appeal from the Appellate Court (86 Conn. App. 381 [AC 24163]), which the Supreme Court accepts as filed on April 12, 2005, it is hereby ordered that said petition be, and the same is hereby denied.

BY THE COURT,

/s/ Alan M. Gannuscio
ASSISTANT CLERK-
APPELLATE

Dated: 4/12/2005
Notice sent: April 13, 2005
Clerk, Superior Court, Hartford at G.A. 13, CR03 127450
Clerk, Appellate Court
Reporter of Judicial Decisions
SAO
Augustus J. Simmons, pro se
Office of the Chief State's Attorney-Appellate Bureau

Augustus J. Simmons, pro se, in support of petition; Erik T. Lohr, Special Deputy Assistant State's Attorney, in opposition.

STATEMENT OF JURISDICTION

This court's jurisdiction is invoked pursuant to the authority granted in 28 U.S.C. § 1257(a) (1964) and, under the Fifth Amendment to the Constitution of the United States, section four, as made applicable to the states through the Fourteenth Amendment, section one.

STATUTE AND CONSTITUTIONAL PROVISIONS

The Constitution of Connecticut provides that – "no person shall be deprived of life, liberty or property, without due process of law." Art. I § 11.

Amendment XIV, Constitution of the United States

> " . . . nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Amendment V, Constitution of the United States

> " . . . nor shall private property be taken for public use without just compensation."

42 U.S.C. § 4655 (P.L. 91-646-January 2, 1971)

> *Requirements for uniform land acquisition policies; payments or expenses incidental to transfer of real property to state; payment of litigation expenses in certain cases.*

Notwithstanding any other law, the head of a federal agency shall not approve any program or project which will result in the acquisition of real property on and after

the effective date of this title, unless he receives satisfactory assurances from such agency that –

(1) In acquiring real property it will be guided, to the greatest extent practicable under state law, by the land acquisition policies in Section 301 and the provisions of Section 302, and

(2) Property owners will be paid or reimbursed for necessary expenses as specified in Sections 303 and 304.

Amendment of Section 4655

Public law 100-17, Title IV §§ 417, 418, April 2, 1987, 101 Stat. 256, provided that, to take effect on the effective date provided in regulations promulgated under Section 4633 of this title (as amended by Section 412 of Pub. L. 100-17), but not later than two years after April 2, 1987, this section is amended by designating existing provisions as Subsec. (a), in Subsec. (a) as so designated striking out "a state agency" the first place it appears and inserting in lieu thereof "an acquiring agency" and striking out "state agency" the second place it appears and inserting in lieu thereof "acquiring agency," and by adding at the end thereof the following new Subsec. (b):

"(b) For purposes of this section, the 'acquiring agency' means –

"(1) a state agency (as defined in Section 4601(3) of this title, which has the authority to acquire property by eminent domain under state law," and

"(2) a state agency or person which does not have such authority, to

the extent provided by the head of the lead agency by regulation."

STATEMENT OF THE CASE

This case is an AIRPORT-related case that transcends back to a 1955 Federal-Aid Grant Agreement between federal and state agencies wherein the state agency (Connecticut Dept. of Transportation) was obligated under the grant agreement to acquire "satisfactory property interests" as defined in 14 C.F.R. § 152.3 for what would ultimately become a navigational servitude imposed upon the owner by the federal agency (F.A.A.) with the invasion, appropriation, installation on the surface of the real property, sophisticated navigational instrumentation controlling ingress and egress of air traffic at Bradley Airport, Connecticut's premier airport in the summer of 1962.

Starting on February 28, 1962 with a tortious course of conduct, the state agency initiated the first condemnation that was negated by the courts as arbitrary, unconstitutional with procedural problems (153 Conn. 351 (1966)) and was remanded.

In January, 1968 the state instituted condemnation proceedings a second time under Conn. General Statute § 48-12, in lieu of C.G.S. § 15-79 and again the court ruled the proceeding "null and void". (160 Conn. 492 (1971))

During the 1969 session of the Connecticut Legislature a special act was passed by the general assembly allowing Augustus Simmons to sue the state for DAMAGES over "loss of use of land" arising out of the bumbling

condemnation proceedings. On January 5, 1970 Plaintiff/Owner Simmons brought such a suit *Simmons v. Wetherall*, Docket #163875 which had several hearing dates scheduled that were all aborted. To date, damages have not been addressed and the action is still pending.

During the summer of 1974 the federal agency, F.A.A., without having paid any compensation, intended to upgrade the navigational servitude with the addition of a "middle marker" on private property and in lieu of negotiating a lease with the owner, enters into a lease with the sponsor of the airport, notwithstanding they had full knowledge that title reverted back to the owner on the land records on March 24, 1972 after the second condemnation was ruled null and void.

In December, 1977, plaintiff retained the firm of Rogin-Hirtle, Esq.'s to represent him upon scheduled days for hearings in damages before referee Shapiro and the very first act of private counsel was an attempt to give the state (and the F.A.A.) "complete insulation from and absolution from all of its sins" by invalidating the hearings in damages and for which a dismissal, discharge, in writing, was hand delivered on December 23, 1977. The discharge of December 23, 1977 was not sufficient to curb the tortious course of conduct.

Where the matter of subject matter jurisdiction and of indispensable parties was ARGUED before the court of competent jurisdiction, Hon. Dupont, A., on June 7, 1982 and the STATE vigorously and vehemently challenged the superior court with lack of subject matter jurisdiction and the court, so recognizing, denied compensation from the slush fund to indispensable parties (VALENTE and ALLAIRE), yet, did not, would not set aside the void decree due

to a supreme court ruling under *Simmons v. Wetherall*, 180 Conn. 587 (1980).

Where the "Slush Fund" monies were allowed to remain before the court from 1978 to 1991 before returning said monies to the state treasury, signifies FEDERAL QUESTION VIOLATIONS of the most severe nature, extending indefinitely the original unlawful, unconstitutional entry by the F.A.A. and the State of Connecticut.

REASONS FOR GRANTING THE WRIT

1. It is plain that the practical effect of the judgment of the Connecticut Supreme Court is to deprive the plaintiff of property without affording it at any time an opportunity to be heard in its defense. The plaintiff asserted an invasion of its substantive right under the federal Constitution to equality of treatment. If the allegations of the complaint could be established, the federal Constitution conferred upon the plaintiff the right to be heard at a meaningful time, and in a meaningful manner to meet currently accepted standards of procedural due process in the area of property rights. *Kukanskis v. Griffith*, 180 Conn. 501 (1980); see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 92 S. Ct. 1983, 32 L. Ed. 2d 556 (1972), *rehearing denied*, 409 U.S. 902, 93 S. Ct. 177, 342 L. Ed. 2d 165 (1972); *Lynch v. Household Fin. Corp.*, 405 U.S. 538, 92 S. Ct. 1611, 31 L. Ed. 2d 424 (1972); *Sniadich v. Family Fin. Corp.*, 395 U.S. 337, 89 S. Ct. 1820, 23 L. Ed. 2d 349 (1969); *Mitchell v. W.T. Grant Co.*, 416 U.S. 600, 94 S. Ct. 1895, 40 L. Ed. 2d 406 (1974); *North Georgia Finishing Inc. v. Di-Chem Inc.*, 419 U.S. 601, 95 S. Ct. 719, 42 L. Ed. 2d 751 (1975).

2. Where the highest court of the state acted in an unconstitutional manner, no other judicial remedy is open to the plaintiff. After the decision by the highest court (180 Conn. 587 (1980)), it has been entirely futile for the plaintiff to apply for a judicial remedy to the lower court that acknowledged it was without subject matter jurisdiction on June 7, 1982; Hon. Dupont, A. presiding upon challenge by the Attorney General's office that the court was powerless to make any payments to lien-holders for reasons plaintiff/owner refused to tender any deeds.

3. If the judgment of the state Supreme Court is permitted to stand, deprivation of plaintiff's property is accomplished without its ever having had an opportunity to defend against the unconstitutional course of conduct, and, without payment of any just compensation. Superior Court refused to hear or act on plaintiff's complaint and denied relief; not because of lack of power or because of any demerit in the complaint, or previous decisions, but because – "the Supreme Court has acted and the lower court will not act to override the Supreme Court."

4. If the result of the state Supreme Court is not set aside, the transgression of the due process clause of the Fourteenth Amendment would be obvious. *Ettor v. Tacoma*, 228 U.S. 148 (1913). See also *Brinkerhoff-Faris Co. v. Hill*, 281 U.S. 273 (1930). The federal guaranty of due process extends to state action through its judicial as well as through its legislative, executive, or administrative branch of government. Where plaintiff's claim is one arising under the federal Constitution and, one on which the opinion of the highest state court has not decided finality, the question whether plaintiff has been accorded due process in the primary sense, – whether it has had an opportunity to present its case and be heard in its support

is the question before the court. Whether acting through its judiciary or through its legislature, a state may not deprive a person of all existing remedies for the enforcement of a right, which the state has no power to destroy, unless there is, or was afforded to him some real opportunity to protect it. *Postal Telegraph Cable Co. v. Newport*, 247 U.S. 464, 475-476 (1918).

5. The pertinent words of the Fifth Amendment of the Constitution of the United States are the familiar ones:

> "nor shall private property be taken for public use, without just compensation." That prohibition, of course applies against the states through the Fourteenth Amendment. *Chicago, B. & Q. R. Co. v. Chicago*, 166 U.S. 226, 239 (1897); *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 122 (1978). The installation of navigational instrumentation by the federal agency (F.A.A.) under Federal Grant Agreement #9-06-009-5708 (1955), no later than July 1, 1962 amounted to a "TAKING" – it was obviously uncompensated – within the amendment's proscription.

6. The appropriation of the beneficial use of plaintiffs property by the state and federal agencies is analogous to the appropriation of the use of private property in *United States v. Causby*, 328 U.S. 256 (1946). "Causby" emphasized that government had not 'merely destroyed property [but was] using a part of it for the flight of its planes.'" *Penn Central*, 438 U.S. at 128 quoting from *Causby*, 328 U.S. at 262-263, n. 7.

To put it another way: A state, *by ipse dixit*, may not transform private property into public property without compensation, even for the limited duration of the deposit in court. *Webb's Fabulous Pharmacies, Inc. v. Beckwith*,

449 U.S. 155 (1980). This is the very kind of thing that the taking clause of the Fifth Amendment was meant to prevent. That clause stands as a shield against the arbitrary use of governmental power.

7. Where the twice discharged and withdrawn private counsel took the action with the malicious intention to cause a deprivation of constitutional rights, or other injury to plaintiff, acted "with such disregard of the [plaintiff's] clearly established constitutional rights that their action cannot reasonably be characterized as being in good faith." *Wood v. Strickland*, 420 U.S. 322 (1974). Where the constitutional right allegedly infringed by them was clearly established at the time of their challenged conduct, where they knew or should have known of that right, their conduct violated the constitutional norm, and, the state Supreme Court, putting a stamp of approval on such malicious intention, to cause a deprivation of constitutional rights denied a right, a privilege claimed under the Constitution of the United States.

8. Where the right to compensation was a vested property right and the right of the plaintiff in error was fixed by the law in force when the property was damaged for public purposes, in addition to the special legislation (Special Act #170 (1969), *Simmons v. Wetherall* (1970)), and the right so vested cannot be defeated or destroyed by subsequent intervention of private counsel INVALIDATING the special legislation, giving retrospective effect to a decree by dating it back to November 12, 1964 was constitutional FRAUD and the Connecticut Supreme Court expressing its policy on just compensation in *E. & F. Construction v. Ives*, 156 Conn. 420 (1968) wherein they quote the United States Supreme Court, and cite its rulings where property is taken before payment is made,

the sanctioning of the INVALIDATION was unconstitutional conduct against the Fifth and Fourteenth Amendments warranting the reversal of the state Supreme Court decree.

9. Pursuant to the dissolution of attachments by the owner on the land records by C.G.S. § 52-327, the real estate shall be free from any lien or encumbrances where the attachments, without statutory authority, have never been prosecuted to effect. (PL. Ex. "A"). Where the Constitution and statutes of this state do, in most express and emphatic terms, prescribe conditions that precede such appropriation and must be complied with before the taking can be complete, the case ought to be sent back to the Superior Court for disposition for two (2) reasons, namely: All the interested and necessary parties are not before the court, and secondly, CANNOT, in this proceeding be brought before the court. *Marshall v. Clark*, 170 Conn. 195 at 205 (1976).

10. The court can always control its own process; and will never permit void writs to be issued and executed, when brought to its attention, and it can make no difference whether the effort to resist the issuance and execution of such process is made within one, or after a lapse of ten years, from, the date of the void judgment. *Harris v. Hardeman*, 55 U.S. 334 (1852).

11. A void judgment rendered without service of process and therefore without jurisdiction, may be set aside at any time for "IRREGULARITY." *Pettis v. Johnson*, 78 Okla. 277, 190 Pac. 681 (1920); *Hockaday v. Jones*, 8 Okla. 156, 56 Pac. 1054 (1899); *Chehalis Coal v. Laisure*, 97 Wash. 422, 166 Pac. 1158 (1917).

12. A court of limited or inferior jurisdiction cannot by its own finding confer on itself a jurisdiction whereupon the real facts there is none.

ARGUMENT

1.) Under Federal Question the use of a Motion to Quash to question JURISDICTION over the subject matter that in case at bar is Federal Project Real Property was referred to as familiar practice more than a century ago in *Landes v. Brant*, 10 How. 348 at page 371 (1850).

Whether the law to be applied in this case is the law of the State, or, must it be judged by Federal Law and Standards where Title Holder/Owner alleges there was not any hearings on the merits; no "Day in Court" to determine damages or the ascertainment of fair and just compensation is governed by the Federal Constitution and where the Uniform Real Property Acquisition Act [P.L. 91-646, 42 U.S.C. §§ 4601 et seq.] was an act of Congress mandating its guidelines on every state in the Union and under [Title II, § 208, Jan. 2, 1971, 84 Stat. 1899] 42 U.S.C. § 4628 the STATE was acting as agent for a federal program, such acquisition shall, be deemed an acquisition by the federal agency having authority over such program or project.

Additionally, the original contract agreement (Ex. #4) mandated proceedings under Federal Regulations and Standards and C.G.S. § 13b-50, section (d) mandates proceedings under Federal Regulations where Federal Projects are at issue, Plaintiff/Owner alleges this Motion to Quash is to be judged by Federal Law, notwithstanding any other state law as expressed in 42 U.S.C. § 4655.

Also, if a suit touch[es] the rights and duties of the United States – has a direct effect upon the United States or its Treasury, that Plaintiff's action should be judged by Federal Standards.

2.) Under Federal Question, when possession has been 'taken', in *1962* and damage done to the premises of the Owner/Title Holder by the United States Government (F.A.A.) as INVADER on-the-ground, APPROPRIATOR, DICTATOR, PERPETRATOR, who, may take property pursuant to its power of eminent domain in one of two ways: It can enter into physical possession of property without authority of a court order; or it can institute condemnation proceedings under various acts of congress providing authority for such takings. Under the first method – physical seizure – no condemnation proceedings are instituted, and the property owner is provided a remedy under the Tucker Act . . . to recover just compensation . . . Under the second procedure the Government may either employ statutes which require it to pay over the judicially determined compensation before it can enter upon the land . . . or proceed under other statutes which enable it to take immediate possession upon order of court before the amount of just compensation has been ascertained . . . Although in both classes of "taking" cases – condemnation and physical seizure – title to the property passes to the government only when the owner received compensation, *Albert Hanson Lumber Co. v. United States*, 261 U.S. 581, 587 [43 S. Ct. 442, 67 L. Ed. 809] (1923), or when the compensation is deposited into court pursuant to the Taking Act . . . The passage of title does not necessarily determine the date of 'taking'. The usual rule is that if the United States has entered into possession of the property prior to the acquisition of title, it is the former event which

constitutes the act of taking. It is that event which gives rise to the claim for compensation and fixes the date as of which the land is to be valued and the government's obligation to pay interest accrues. See *United States v. Lynah*, 188 U.S. 445, 470-471 [23 S. Ct. 349, 47 L. Ed. 539] (1903); *United States v. Rogers*, 255 U.S 163 [41 S. Ct. 281, 65 L. Ed. 566] (1921); *Seaboard Air Line R. Co. v. United States*, 261 U.S. 299 [43 S. Ct. 354, 67 L. Ed. 664] (1923); *United States v. Dow*, 357 U.S. 17, 21, 78 S. Ct. 1039, 2 L. Ed. 2d 1109 (1958); see *Mastic Acres, Inc. v. State*, 46 Misc. 2d 660, 663, 260 N.Y.S. 2d 532 (1965).

3.) The fact that TITLE to the 'doolittle clear zone', referenced in the FEDERAL-STATE CONTRACT AGREEMENT of February 1, 1955 (Ex. #4) did not vest in the state, both condemnation actions (2) ruled null and void – does not mean that there was no taking of Plaintiff/Owner's property by the real party in interest – The United States Government with exclusive jurisdiction who has not offered, paid, or deposited [A-DIME] against the servitude of forty-three (43) years – and counting – and the Connecticut Supreme Court cannot exercise jurisdiction over the major federal agency and where court records show the illegal unconstitutional "VERBAL SLUSH FUND" returned to the State Treasury (Ex. #2) on December 21, 1991 for reasons there is no proceeding before the court against which funds can be dispersed, and, nine (9) years later on May 31, 2000 the Connecticut Supreme Court [CLOSED-THE-DOORS] (Ex. #6) to the Court against Plaintiff bringing any more actions under *Simmons v. Wetherall*, #163875 tort action without ever a single hearing or a day in court where Plaintiff claims entitlement to recovery of its reasonable costs in the way of attorney, appraisal and engineering fees incurred in the

prosecution of this case under FEDERAL LAW mandated on every state in the Union under Public Law 91-646, the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970, approved January 2, 1971, 84 Stat. 1894, provided in 42 U.S.C. § 4654 and an identical statute was enacted by the Connecticut Legislature under C.G.S. § 48-17 a, b, c, to correspond with Federal Law.

4.) Under FEDERAL QUESTION, notwithstanding all the claims, counter claims, charges and counter charges, hoopla, paparazzi associated with the forty-three (43) year case, there has – NEVER – been a judgment entered as to the amount of just compensation recoverable.

5.) Under FEDERAL QUESTION, Title Holder/ Owner pleads for this court to apply the same constitutional yardstick it did more than a century ago in *Chicago, B. & Q. R. Co. v. Chicago*, 166 U.S. 234, 247, 41 L. Ed. 983, 988, 17 S. Ct. 851 (1897) declaring: It is essential to the validity of any judgment that the court rendering it should have had jurisdiction, not only of the parties, but of the subject matter – ALBEIT – where there is *NO* judgments before the courts, the plea is against the State Supreme Court decree under Plaintiff's Tort Action (*Simmons v. Wetherall*), 180 Conn. 587 (1980) where this court declared in *Standard Oil Co. v. Missouri*, 32 S. Ct. at 409 (1911) that: 'If the action be for a libel or personal tort, the court cannot order in the case a specific performance of a contract.' Such judgments – OR DECREES – would be absolutely VOID, because the court, in rendering them, would transcend the limits of its authority in those cases. *Windsor v. McVeigh*, 93 U.S. 274, 282, 23 L. Ed. 914, 917 (1876). See also *Reynolds v. Stockton*, 140 U.S. 265, 268, 35 L. Ed. 467, 469, 11 S. Ct. 773 (1891).

6.) Under FEDERAL QUESTION, Title Holder/ Owner pleads for this court to apply the same constitutional yardstick it did in *Connecticut v. Doehr*, 501 U.S. 1, 111 S. Ct. 2105, 115 L. Ed. 2d 1 (1991) mandating vacature of ex parte attachments by Plaintiff's (former) discharged and legally withdrawn (4/19/78) private counsel acting as a self-appointed judge and sheriff (6/5/78) without any service of process or publication of notice or return of service to the Superior Court and no hearing – ever – before or after as to its validity, this court emphasized the importance of providing a prompt post-deprivation hearing at the very least. *Mitchell*, 416 U.S. at 606, 94 S. Ct. at 1899; *Di-Chem*, 419 U.S. at 606, 607, 95 S. Ct. at 722-723.

7.) Under Federal Question is the constitutional obligation of Federal Agency (F.A.A.) to pay compensation, from date of taking and interest to be considered where the Owner has not been paid one (1) dollar throughout this multi-decade fiasco and only this United States Supreme Court has the authority to enforce the Fifth Amendment upon the Federal Agency where in Plaintiff/Owner/Title Holder, BUT, Defendant in a criminal action letter to the Supreme Court of Connecticut on Jurisdiction, dated March 29, 2005 (Ex. #7) wherein the last paragraph on page four (4) states: That the Government (F.A.A.) is bound to make just compensation for whatever it shall take from the individual is undoubted; and in the words of the Supreme Court in *Great Falls Manufacturing Co. v. Attorney General*, 124 U.S. 596, 8 S. Ct. 631 (1888) – 'It is to be assumed that the United States is incapable of bad faith, and that Congress will promptly make the necessary appropriations whenever the amount of compensation has been ascertained in the mode prescribed.'

8.) Under Federal Question, Title Holder/Owner pleads for this court to apply the same constitutional yardstick it did almost two (2) centuries ago in *Martin v. Hunter's Lessee*, 14 U.S. (I Wheat) 304, 364, 4 L. Ed. 97 (1816), cited by Connecticut Supreme Court in *Clover v. Urban*, 108 Conn. 13, 17, 142 A. 389, 390 (1929) that everything done under the judicial process of courts not having jurisdiction are IPSO FACTO VOID.

9.) Under Federal Question where Plaintiff/Owner might have availed himself at a court of law, but was prevented by bad faith, fraud, or accident, unmixed with any fault or negligence in himself, by his own agent, for a "DAY IN COURT" to address court cost, attorney fees, ascertainments of just compensation will . . . as this United States Supreme Court stated in *Marshall v. Holmes*, 141 U.S. 589, 12 S. Ct. 62, 35 L. Ed. 870 (1891) justify an application to a court of chancery, or, in this 21st century to the United States Supreme Court to restrain proceedings at law whenever through fraud, accident, mistake or misrepresentation, one of the parties in a suit at law has obtained, or is likely to obtain, an unfair advantage over the other, so as to make the legal proceedings an instrument of injustice.

CONCLUSION

Relief requested is:

1. That all encumbrances listed in the Motion to Quash be so ORDERED.

2. That the Plaintiff be granted A DAY IN COURT for DAMAGES as a result of two (2) null and void condemnations, and, the illegal, unlawful, unconstitutional "BAUBLE" in this motion

by granting Plaintiff the right to REACTIVATE EXHIBIT #3.

3. That the injunction issue against the TRESPASSER leasing real property to the F.A.A. for which there has not been any mesne process, for legal acquisition, since March 24, 1972.

4. That the INJUNCTION issue against the TRESPASSER (Connecticut Department of Transportation) leasing real property to the Connecticut Air National Guard for which there has not been any mesne process, for legal acquisition, since March 24, 1972.

5. That the "encroachment fence" on Parcel "A" be set back to the property line by Connecticut Department of Transportation that transpired in 1996.

Respectfully submitted,

AUGUSTUS SIMMONS
P.O. Box 1
Windsor, CT 06095
(860) 569-6714

APPENDIX

#163875	SUPERIOR COURT
AUGUSTUS J. SIMMONS	J/D OF HARTFORD/ NEW BRITAIN AT HARTFORD
V.	
HORACE A. WETHERALL	SEPTEMBER 13, 2004

MOTION TO QUASH WRIT - INJUNCTION

(Filed September 13, 2004)

/s/ Augustus Simmons
Augustus Simmons
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

MOTION - TO QUASH WRIT - INJUNCTION

Augustus J. Simmons, Plaintiff in the *Simmons v. Wetherall Tort Action* #163875, moves the court to quash the encumbrances (Vol. 59, p. 657-668; Vol. 59, p. 654-656; Vol. 59, p. 623-626; Map Book 17, page 853; Map Book 17, page 854). Entered in this action on June 5, 1978, wherein, whereby the (former) law firm of Rogin, Nassau, Caplan, Lassman and Hirtle of Hartford County, State of Connecticut, acting as their own judge and sheriff, to take federally occupied, airport related real property*; highway property

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* In *Mondou v. New York, N.H. & H.R. Co.* 223 U.S. at p. 57, 32 S.CT. at page 178, 56 L.Ed. 327, 38 L.R.A., N.S. 44 (1911) it was made known to the Connecticut Supreme Court that states may not discriminate against a federal cause of action and "are required to enforce Federal Law [under] the Supremacy Clause of Art. VI of the United States Constitution." *Testa v. Katt,* 330 U.S. 386, 67 S.CT. 810, 91 L.Ed. 967 (1947); *Household Consumer Discount v. Vespaziani,* 490 p. 209, 212, 415 A 2d 689 (1980).

from (former) client Plaintiff, proceeding as "The Court", in lieu of any authoritizing statute, cannot effectively sign and issue a writ in any action in which he is the Plaintiff – or representing Plaintiff.**

This motion is based on the ground that the writ was not served, no notices were given or issued, without compliance with the provisions of C.G.S. § 52-56 in that Plaintiff's (former) counsel failed to give notice as required by C.G.S. § 8-129 and no undertaking as required by Conn. Gen. Stat. (Rev. 1958, Rev. to 1995) § 52-54, also § 52-57 has been filed with Chief Clerk of Superior Court by withdrawn counsel in this proceeding, all of which more clearly appears from the AFFIDAVIT of Plaintiff/Owner/ Title Holder attached as Exhibit "A", and incorporated by reference.

This motion is based on the fact of no mesne process initiated or commenced, no notices or service of process, no return of process to the Superior Court, the lack of jurisdiction of subject matter and parties, and, lack of "legal standing to sue – or proceed."

The same rule would apply equally to a case where a judge or clerk was a plaintiff. *Willard v. Town of West Hartford,* 135 Conn. 303, 304, 63 A 2d 847 (1949); *Brunswick v. Inland Wetlands Commission of the Town of Bethany,* 25 Conn. App. 543, 544, 596 A 2d 463 (1991).

** *Issuing Officer as Plaintiff.* When the Plaintiff is an attorney, and, therefore, a commissioner of the court with general power to sign writs, he cannot effectively sign and issue a writ in any action in which he is a Plaintiff.

Dated September 13, 2004

cc: Affidavit & Exhibits

/s/ Augustus Simmons
Augustus Simmons
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

EXHIBIT "A"

AFFIDAVIT

MOTION TO QUASH – INJUNCTION

PURPOSE

The purpose of the Motion to Quash defective attachments is to afford Plaintiff/Owner/Title Holder/Creditor speedy relief where he is aggrieved by order in abuse of process of court by FRAUD, COLLUSION, CONSPIRACY, LACK OF JURISDICTION, NO CONSIDERATION, NO MESNE PROCESS, NO REFERENCE TO THE NATURE OF THE CLAIM (FEDERAL CONTRACT), AND, to protect garnishees and other persons having a proprietary interest in the attached property, in order to relieve them of the burden of the attachment and to protect their legal rights to the attached property.

"A motion to quash is the usual procedure for dissolving or vacating attachments where there is some defect or irregularity in the attachment proceedings." *JEPSEN v. TONI CO.*, 20 Conn. Supp. 287, 290, 133 A 2d 150, 152; 6 AM. Jur. 2d attachments and garnishment § 420. See also *Lyon and Billard Co. v. McCarthy,* 6 Conn. Cir. 51 (1869).

DISSOLUTION OF ATTACHMENTS

The attachments on the land records under the caption of *Augustus Simmons v. Wetherall,* #163875 by Plaintiff/Owner's Title Holder's (former) private counsel (Rogin-Hirtle, Esq.'s), DISCHARGED ten (10) days after filing an appearance, for tortuous cause, on 12/23/77, having legally withdrawn from all Simmons matters on 4/19/78, YET, filing attachments under the Owner's name against the Owner, without ever listing the Owner for notice and service, that was an illegal, fraudulent and tortuous scheme for "Self Help" are: Vol. 59, p. 657-668; Vol. 59, p. 654-656; Vol. 59, p. 623-626; Map Book 17, page 853; Map Book 17, page 854.

Private counsel authorized to sign and issue writs cannot act as judge in his own case, *Dyer v. Smith,* 12 Conn. 384.

Where discharged and withdrawn Rogin-Hirtle, Esq.'s could never execute on its VOID judgment in the manner prescribed by C.G.S. § 52-328, the Connecticut Supreme Court has held that a failure to comply with the statute extinguishes the attachment lien and prevents its merger into a judgment lien. *Bradbury v. Wodjenski,* 159 Conn. 366, 269 A 2d 271 (1970).

The United States Supreme Court made known in *Connecticut v. Doehr,* 111 S. CT AT 2118 its position by stating; The law concerning attachments has rarely, if ever, required defendants to suffer an encumbered title until the case is concluded without any prior opportunity to show that the attachment was unwarranted. Our cases have repeatedly emphasized the importance of providing a prompt post deprivation hearing at the very least.

Mitchell, 416 U.S. AT 606, 94 S.CT. AT 1899; DiChem, 419 U.S. AT 606-607, 95 S.CT. AT 722-723.

JURISDICTION

Plaintiff relies on the rule that the self-appointed judge (Rogin-Hirtle, Esq.'s) of the law firm of Rogin, Nassau, Caplan, Lassman and Hirtle of Hartford County of an inferior court is personally liable for the injuries consequent on a judgment given in a cause over which he had no jurisdiction. The rule is formulated in *Prince v. Thomas,* 11 Conn. 472 as follows:

"If a warrant issues from a magistrate or officer of special and limited powers, who has not jurisdiction of the person, subject matter and process, all who voluntarily and actively engaged in its procurement and execution are trespassers."

This rule has been applied in a number of cases in which void process was issued by a justice of the peace, grand juror, or military officer. *Burlingham v. Wylef,* 2 Root 152; *Gruman v. Raymond,* 1 Conn. 40; *Tracy v. Williams,* 4 Conn. 107; *Hall v. Howd,* 10 Conn. 514; *Allen v. Gray,* 11 Conn. 95; *Dyer v. Smith,* 12 Conn. 384; *Mallory v. Merritt,* 17 Conn. 178; *Church v. Pearne,* 75 Conn. 350, 53 ATL. 955.

In this case, the jurisdiction over the parties and process turns on the question whether (Rogin-Hirtle, Esq.'s.) had jurisdiction over the subject matter. "Jurisdiction of the subject matter is the power to hear and determine cases of the general class to which the proceedings in question belong." 15 corpus juris, 734; 4 words & phrases, 3886, 3887, and many cases cited. The Supreme Court of

the United States defines jurisdiction as "The right to adjudicate concerning the subject matter in a given case. To constitute this there are three essentials: first, the court must have cognizance of the class of cases to which the one to be adjudged belongs; second, the proper parties must be present; and third, the point decided must be, in substance and effect, within the issue." *Reynolds v. Stockton,* 140 U.S. 254, 268, 11 Sup. CT. 773.

It is a basic tenet of our judicial system that unless a duly authorized and directed officer makes service and return of a writ of summons (or attachment) and complaint there is no mesne process. *Basilicato v. Dept. of Public Utility Control,* 197 Conn. 320, 325, 497 A 2d 48 (1985); *Village Creek Homeowners Assn. v. Public Utilities Comm.,* 148 Conn. 336, 339, 170 A 2d 732 (1961); *Case v. Humphrey,* 6 Conn. 130, 139 (1826).

From *McDaniel v. Taylor* 25 Sup. CT Rep. 369 reads: Much more so will equity enjoin parties from enforcing those obtained without service. Such judgments are not erroneous and not voidable, but, upon principles of natural justice, and under the due process clause of the 14th Amendment, are absolutely VOID. They constitute no justification to a Plaintiff who, if concerned in executing such judgments, is considered in law as a mere trespasser. *Harris v. Hardeman,* 14 How. 339, 14 L. Ed. 446.

Where the court lacks jurisdiction of parties, a "Judgment is VOID, has no authority and may be impeached." *O'Leary v. Waterbury Title Co.,* 117 Conn. 39, 43, 166 A 673 (1933). The deficiency of service in *Case v. Humphrey,* supra, arose from an inadequate affidavit relative to the deputation of an indifferent person who left purported service with the Defendant. Since there was no actual

service of process, the ensuing judgment was "extra-judicial and void" 6 Conn. AT 139. Because of this, no determination by the court of the respective rights of the parties was entitled to legal validity, regardless of when the defendant appeared to apprise the court of the lack of jurisdiction.

It is, of course, essential to the validity of any judgment that the court rendering it should have had jurisdiction, not only of the parties, but of the subject matter. *Chicago, B. & Q. R. Co. v. Chicago,* 166 U.S 234, 247, 41 L.Ed. 983, 988, 17 Sup. CT. Rep. 581; *Castro v. Viera,* 207 Conn. 420, 429, 541 A 2d 1216 (1988).

The Federal Question is whether, without such jurisdiction, the defendants (including Plaintiff/Title Holder/ Owner) were denied due process of law. Under the 14th Amendment they were entitled to notice and an opportunity to be heard. That necessarily required that the notice and the hearing should correspond, and that the relief granted should be appropriate to that which had been heard and determined on such notice. With no relief granted, no day in court – on tort, it (inferior court) cannot enter a judgment which is beyond the claim (tort) asserted, or which, in its essential character, is not responsive to the cause of action on which the proceeding was based.

Citing *Standard Oil Co. v. Missouri,* 32 Sup. CT. AT 409: "Though the court may possess jurisdiction of a cause, of the subject-matter, and of the parties, it is still limited in its modes of procedure, and in the extent and character of its judgments. It must act judicially on all matters and cannot transcend the power conferred by the law. If for instance, the action be upon a money demand, the court,

notwithstanding its complete jurisdiction over the subject and parties, has no power to pass judgment of imprisonment in the penitentiary upon the Defendant. If the action be for a libel or personal tort, the court cannot order in the case a specific performance of a contract. If the action be for the possession of real property, the court is powerless to admit in the case the probate of a will . . . the judgments mentioned, given in the cases supposed, would not be merely erroneous, they would be absolutely VOID, because the court, in rendering them, would transcend the limits of its authority in those cases." *Windsor v. McVeigh,* 93 U.S. 274, 282, 23 L.Ed. 914, 917. See also *Reynolds v. Stockton,* 140 U.S. 265-268, 35 L.Ed. 467-469, 11 Sup. CT. Rep. 773.

The inferior court of Rogin-Hirtle, Esq.'s. had no "Legal standing to sue – or proceed" on January 4, 1978 – having been DISCHARGED, for fraud and deception practiced on their client, where he has been prevented from exhibiting fully his case, by reason of which there has never been a real contest before the court of the subject matter of the suit; that the discharge was a rejection of the "VERBAL OFFER", regardless of what the numbers were on December 23, 1977. (Ex. #1).

The – "Legal Withdrawal" from all Simmons matters on April 19, 1978 upon the Owner's refusal to tender any title, deeds or rights of any nature was the last "HURRAH", shalom, sayonara to Rogin-Hirtle, Esq.'s.

Since the Plaintiff/Defendant/Title Holder/Owner was never served, or, listed for service with the proposed writ, summons and complaint, nor was such returned to court, no action ever came into being. See *Hillman v. Greenwich,* 217 Conn. 520, 527, 587 A 2d 99 (1991). Thus, the lack of both these essentials in the instant case constitutes more

than a circumstantial defect. The parties and the court lack a framework within which to entertain a motion or judgment to enforce any settlement agreement.

CONCLUSION

Plaintiff/Defendant/Title Holder/Owner's Motion to Quash should be granted.

NOTICE – PRIOR TO JUDGMENTS

One of the most important conditions, BEFORE proclaiming any judgments, by the Court of General Jurisdiction – or inferior courts – is that all persons having an interest in the subject matter must be made parties or given reasonable notice; a certificate of such joinder or notice must be appended to the complaint. Conn. Practice Book (2001), § 17-56(b); *Mendrochowicz v. Wolfe,* 139 Conn. 506, 95 A 2d 260 (1953).

This rule is not merely procedural but one founded in due process that a court will not adjudicate conflicting interests unless all persons affected have been notified and given a reasonable opportunity to appear and be heard. *Winick v. Winick,* 153 Conn. 294, 298, 216 A 2d 185 (1966); *Benz v. Walker,* 154 Conn. 74, 77, 221 A 2d 841 (1966).

The court demands strict compliance with this requirement. *Sloane-Wheeler Corp. v. Odiseos,* 153 Conn. 705, 707 A 2d 508 (1967); *Wenzul v. Danbury,* 152 Conn. 675, 677, 211 A 2d 683 (1965); *Manfort Bros. Inc. v. Kerrigan,* 154 Conn. 112, 114, 222 A 2d 218 (1966).

If the requirement is not met, the action will be dismissed for want of jurisdiction. *Mannweiler v. LaFlamme,* supra, AT 34-35; *Wawryzynowicz v. Wawryzynowicz,* 164 Conn. 200, 204, 319 A 2d 407 (1972).

This matter was – ARGUED – in Superior Court on 6/7/82, Hon. Dupont, A., presiding, wherein it was made clear and part of the court record of NO NOTICES, NO SERVICE, NO RETURNS, NO MESNE PROCESS COMMENCED.

JUDGMENT

A judgment void on its face may be vacated upon motion no matter what length of time has interposed since its rendition; neither is it necessary for the movant to show any meritorious defense, nor can the court impose any conditions for vacating it. *Furman v. Furman,* 60 AM. ST. Rep. 642, 643; *Blyth & Fargo v. Swenson,* 15 Utah 345, 49 PAC 1027; *Harris v. Hardeman,* 14 How. 337, 14 L.Ed. 444.

Citing *New Haven Sand Blast Co. v. Dreisbach,* 104 Conn. 322 (1926) stating: It is an implied requirement of our statutes, rules, and decisions that all pleadings be in writing. This citation also makes emphatically clear that: jurisdiction cannot be conferred upon a court by agreement of the parties or by waiver. This citation made clear the court was without jurisdiction to render judgment upon an oral demurrer.

Rogin-Hirtle, Esq.'s cannot proclaim judgment without legal seizure of the res.

Rogin-Hirtle, Esq.'s cannot proclaim judgment before notice and service to necessary parties.

Rogin-Hirtle, Esq.'s cannot proclaim judgment where Plaintiff was prevented from exhibiting fully his case by fraud or deception practiced on him by his own counsel, as by keeping him away from court – NO DAY IN COURT!!!

Rogin-Hirtle, Esq.'s cannot proclaim judgment under Plaintiff's tort action (#163875) that is not a "DEBT" due; that cannot be transcended, transmogrified into a real property acquisition wherein Plaintiff/Owner not listed for notice or service.

SERVICE OF PROCESS OR NOTICE

A writ of attachment will be dissolved or vacated when the proscribed procedures dealing with giving notice have not been complied with. *Tinnin v. Tinnin,* 391 SO 2d 1047 (Ala. Civ. App. 1980); *Jayne v. Peck,* 155 Colo 513, 395 P 2d 603 (1964); *Young v. Margiotta,* 136 Conn. 429, 433, 71 A 2d 924 (1950); *Consolidated Motor Lines, Inc. v. M.&M. Transportation,* 128 Conn. 107, 109, 20 A 2d 621 (1941).

Statutory notice is a part of the due process safeguards and is not a mere formality. *F.D.I.C. v. ISBAN,* 870 F. Supp. 24 (D. Conn. 1994) (Applying Connecticut Law).

The failure to timely serve a summons of attachment requires the vacature of the order of attachment as well as the setting aside of the service of the summons. *Coombs v. Russell,* 511 A2d 448 (ME. 1986); *Gailbraith v. Yanick,* 77 Misc. 2d 130, 353 N.Y.S. 2d 134 (Sup. CT. 1974).

Citing *Williams v. Ives,* 25 Conn. 568 (1857) that: "Mesne process must be returned or acts done under it will be deemed to be – TORTUOUS." See also *Morisette v. Archambault,* 31 Conn. Sup. 302 (1974).

At page 26 of transcript of proceedings before Superior Court Hon. Dupont, A., on June 7, 1982, by Atty. Walter Bass representing two (2) lien-holders against the Plaintiff (Simmons), the court was told: "There was to be a citation issued so that all people would come forth and present their claims.

I have a right to inform the court that in the citation, my two clients were listed under the care of my office.

I will state to the court that I have never been served any citation nor has my clients ever been served with any kind of a citation to give us any notice to come in to determine what our priorities are in this matter."

The record shows a denial of any compensation consideration by the court from the "VERBAL SLUSH FUND" to lien holders Valente and Allaire on June 7, 1982 and a return to the treasury on December 21, 1991 of whatever funds were with the Chief Clerk of the Superior Court for the primary reason that Plaintiff/Owner/ Creditor never tendered any deeds. (Ex. 2).

HEARING

A hearing in regard to attachment may arise in two contexts, each of which serve the same purpose. First, the statute may mandate that an ex parte attachment be followed up by a hearing to determine whether the attachment is warranted.

Second, although no hearing is mandated, the statute may grant the Defendant the right to bring a motion for a hearing on the merits of the attachment.

In either case, the Defendant has an opportunity to dissolve the attachment, and the Plaintiff must establish the factual and legal grounds for an attachment. *Cameco Industries Inc. v. Mayatrac,* S.A. 789 F. Supp. 200 (D. MD. 1992); *Alessi v. Belanger,* 644 SO 2d 778 (LA CT. App. 1st Cir. 1994).

Where there has – never – been any hearing on a confirmation held, permitted, addressed, the party obtaining the attachment (former counsel Rogin-Hirtle, Esq.'s.) must demonstrate that the requirements for obtaining the attachments are met, and, also demonstrate the need for continuing the levy. *Bank of Leumi Trust Co. of New York v. Istim Inc.,* 892 F. Supp. 478 (S. D. N.Y. 1995).

TITLE AND OWNERSHIP INTEREST

Where it is crystal clear that ownership and title was retained with the discharge of Plaintiff's collussory, malicious and tortious counsel (Rogin-Hirtle, Esq.'s) of the law firm of Rogin, Nassau, Caplan, Lassman and Hirtle on December 23, 1977, ten (10) days after filing an appearance and the corrupt and malicious counsel submitted a withdrawal from all Simmons matters on April 19, 1978 upon denial of any deeds and the discharge of 12/23/77 was an obvious rejection of a "verbal" offer, a right to move to dissolve a writ of garnishment is granted to any person having an ownership interest in the property.

A person (or his counsel) cannot attach his own property. *John Deere Plow Co. of St. Louis v. L.D. Jennings, Inc.,* 203 S.C. 426, 27 S.E. 2d 571 (1943).

Thus, a totally emasculated, unliquidated tort claim *(Simmons v. Wetherall* #163875) not reduced to judgment,

is not a "DEBT" within the meaning of the garnishment statutes. *Holcomb v. Winchester,* 52 Conn. 447 (1885).

FILING – TIME OF FILING

Where required by statute § 52-48; the failure to file complaints with the Clerk of the Court is fatal and requires vacature of the attachment. *Tuohey v. Martinjak,* 119 Conn. 500, 501, 177 A 721 (1935) *Young v. Margiotta,* 136 Conn. 429, 433, 71 A 2d 924 (1950).

Courts have held it is fatal to the attachment to O-M-I-T the owner of the property to be attached. *Harwood v. U.S. Shipping Board,* 300 F 433 (D. Conn.) (1924).

FEDERAL GRANTS – CONTRACTS

At issue is the contractual arrangements between the government as Lessee (F.A.A.) and the state as Lessor (Conn. Dept. of Transportation) of real property wherein the invasion and appropriation by F.A.A., with exclusive federal government domain, to install navigational instrumentation on the surface of the real property is undoubtedly of "considerable magnitude"; "the United States has a substantial interest in regulating aircraft travel and promoting air travel safety" and Rogin-Hirtle, Esq.'s. attempted to proceed under Plaintiff's 1970 tort action to apply retroactively to 1962 – year of entry by F.A.A. that was unconstitutional – FOR FAILURE TO JOIN THE UNITED STATES AS A NECESSARY PARTY.

Private counsel Rogin-Hirtle, Esq.'s, in collusion and concert with state authorities to abrogation of the explicit terms of a Federal Land Acquisition Program dealt a serious blow to the congressional mandate incorporated in

the Uniform Real Property Acquisition Act, P.L. 91-646 (1971) (42 U.S.C. §§ 4601) et Seq. and indeed all other federal land acquisition programs that are national in scope.

Certainty and finality are indispensable in any land transaction, but they are especially critical when, as here, the federal officials defied the Mandate of Congress, and the Fifth Amendment Compensation Mandate by negotiating leases with the TRESPASSER – in lieu of the Owner. UNDISPUTABLY, F.A.A. is the "TAKING" agency on or about July 1, 1962.

INJUNCTION – TRESPASS

1. Where there is an unliquidated claim (*Simmons v. Wetherall* – #163875 (1970) and evidentiary facts were ready to be presented in the fifteen days scheduled by Referee Shapiro (Ex. 3) for the computation of damages and the first shot out of the cannon by Plaintiff's "contingency" counsel (Rogin-Hirtle, Esq.'s) was to annihilate, destroy the opportunity to consider and act on the evidentiary facts; Plaintiff contends that he is entitled to compensation, from the date of taking by the government (F.A.A.), and, for the fifteen (15) years of trespassing that had already transpired (1962-1977), when Rogin-Hirtle, Esq.'s agreed, on a contingency basis, to present "evidence of damages of sufficient certainty and definiteness," substantial enough to have the Legislature grant "Special Act #170 – (1969)."

2. The issue in the instant case is whether an order of attachment by Plaintiff's discharged, withdrawn, (former) counsel Rogin-Hirtle, Esq.'s, acting as their own sheriff, lacked the authority, right, jurisdiction to fraudulently

conceal, shelter, disallow from getting before the court, the forty (40) years of illegal, unlawful, unconstitutional – *LEASING* – by the Trespasser (C.D.O.T.) (Lessor) to the federal agency (F.A.A. Lessee) of Plaintiff's real property, necessary for a federal project and servitude of substantial proportions, that is, was the basis from day one in 1962 of all legal actions, state and federal, including two (2) attempted state condemnations that is the basis and justification for an – INJUNCTION – against the Trespasser – to eliminate the invalid, unconstitutional, unconscionable "PROPAGANDA" by the federal agency for not offering, contacting, depositing with the Federal Court the sum of ONE (1) DOLLAR against a navigational servitude of 42 years upon the hue and cry – "We have a lease from the state agency."

3. The original contract agreement of January 12, 1955, #9-06-009-5078 between the two agencies committed the federal agency to $37,000 – at 1955 values. (Ex. 4).

4. In support of an INJUNCTION, Plaintiff pleads with the court to enforce the judgment of Referee Shapiro, filed with the Superior Court Clerk on January 17, 1977 under Docket #162923, *Augustus Simmons v. Frank Parizek* wherein judgment may enter as follows:

5. For the Plaintiff granting him possession of the land described in the complaint as the title owner thereof. The defendants or their successors shall, within 100 days, vacate the land shown as Parcel C on the map entitled "Property of Anastasia Simmons, East Side Rainbow Road, East Granby, Conn., W.M. Alford Civil Engineer, Scale: 1 in. = 60 ft., date Oct., 1964" and recorded at Vol. 12 (map) page 568 of the East Granby land records. The defendants, or their successors, within such legal authority as may

exist and permit, shall take appropriate steps towards not renewing the lease to the United States relative to the instrument landing lights situated on said Parcel C. The defendants or their successors shall pay to the Plaintiff the amount of $37,813.64 for rent due through October, 1969, together with an appraiser's fee of $1,800 and a map allowance of $250.

Judgment may enter in accordance with the foregoing, together with such other proper costs to which the Plaintiff may be entitled.

6. The Plaintiff has for a long time owned and continues to be the Owner with legal title of a certain tract of land with federal navigational instrumentation thereon in East Granby, CT, known and designated as Parcel "C" on a certain map on file in the office of the Town Clerk of said town as map number 12, page 568.

7. Said parcel is bounded on the southwest by Route #20 containing 5.97 acres and as appurtenant to his land the Plaintiff owns and possesses all the rights, privileges and leases in and to the lands invaded, appropriated, and occupied by the federal agency, (F.A.A.), as of July 1, 1962 without ever contacting the Owner, without ever offering, paying, or depositing with any court, just and due compensation as mandated by the Fifth Amendment.

8. By reply letter dated May 26, 1971, nine (9) years after invasion and appropriation, the federal agency, (F.A.A.) acknowledged not having paid any compensation, deferred the payment of compensation by stating: "We have administratively determined to reserve rights for the State of Connecticut to request federal participation in the costs of acquiring your land, after it has been accomplished successfully." (Ex. #5).

9. In August, 1982, demand was made of the F.A.A. to pay rent – OR – and the demand was answered by Chief Counsel Murdock with the answer: Sorry Mr. Simmons, we have a lease from the State of Connecticut.

10. That after two attempted condemnations by the State of Connecticut that were ruled null and void, all condemned property interests reverted back to the Owner on March 24, 1972 AT Vol. 52, p. 242-243 on Town of East Granby Land Records.

There HAS NOT, IS NOT, been any mesne process initiated in any court, state or federal, since reverting on 3/24/72 by the Connecticut Department of Transportation, (LESSOR), to acquire legal rights to Parcel "C" upon which federal navigational instrumentation has imposed a servitude against the Owner.

11. Notwithstanding the failed condemnation attempts, the Dept. of Transportation of State of Connecticut continued LEASING the subject property to the federal agency stating at #10 in the 1974 lease DOT-FA74NE-0369 that: The Lessor hereby warrants that it has acquired and possesses an adequate real estate right in the property described herein, and that it is authorized to grant to the government the rights and interests set forth herein.

At #16 it states: This lease will supersede license DOT-FA73NE-0308.

12. That since March 24, 1972 when ownership and title reverted to the original Owner, the Town of East Granby, Connecticut reinstated a tax assessment against the real property, notwithstanding the servitude, and, where there IS NOT, HAS NOT, been any mesne process initiated or commenced in any state or federal court by the

trespasser, Connecticut Department of Transportation, to acquire rights to the subject property that they have been leasing and the fact that the LESSEE (F.A.A.) has never paid or deposited any compensation to the state – after forty (40) years of collussory "hanky-panky" against the owner, mandates the F.A.A. negotiate leases with the Owner and title holder – in the same manner as has been done at the smaller state owned Groton-New London Airport and numerous other airports throughout the northeast region.

13. Plaintiff has suffered irreparable injury for decades, not years, and unless the Defendant and her agents, employees, and servants are prevented from continuing in such conduct and committing such trespasses, Plaintiff will be put to continued great expense with lien-holders to subsidize the federal operation.

14. If said conspiracy and unlawful acts are permitted to continue, the relief sought in this action will cause far greater injury than will be done to the defendants by granting it; and Plaintiff has no adequate remedy at law.

15. The injury is a continuing injury that will continue into the future until such time as the INVADER, F.A.A., complies with the 5th Amendment of paying just compensation from date of taking with commensurate interest.

16. The Plaintiff claims:

a) Injunction

b) $500,000 damages

RELIEF REQUESTED

1. That all encumbrances listed in the Motion to Quash be so ORDERED.

2. That the Plaintiff be granted A DAY IN COURT for DAMAGES as a result of two (2) null and void condemnations, and, the illegal, unlawful, unconstitutional "BAUBLE" in this motion by granting Plaintiff the right to REACTIVATE EXHIBIT #3.

3. That the injunction issue against the TRESPASSER leasing real property to the F.A.A. for which there has not been any mesne process, for legal acquisition, since March 24, 1972.

4. That the INJUNCTION issue against the TRESPASSER (Connecticut Department of Transportation) leasing real property to the Connecticut Air National Guard for which there has not been any mesne process, for legal acquisition, since March 24, 1972.

5. That the "encroachment fence" on Parcel "A" be set back to the property line by Connecticut Department of Transportation that transpired in 1996.

/s/ Augustus Simmons

Augustus Simmons
P.O. Box 1
Windsor, CT 06095
(860) 569-6714

CERTIFICATION

Plaintiff/Title Holder/Owner hereby certifies copies of this Motion to Quash and affidavit have been mailed, postage prepaid this 13th day of September, 2004 to all parties to the proceeding listed below.

Marion C. Blakey
Federal Aviation Administrator
800 Independence Ave. S.W.
Washington, D.C. 20591

Stephen E. Korta II, Commissioner
Connecticut Department of Transportation
2800 Berlin Turnpike, P.O. 317546
Newington, CT 06131-7546
Rogin, Nassau, Caplan, Lassman & Hirtle, Esq.'s
City Place I
Hartford, CT 06106

John Malone, Esq.
State Attorney's Office
111 Phoenix Ave.
Enfield, CT 06082

Tom Byrne, Esq.
2-E Farmington Commons
790 Farmington Ave.
Farmington, CT 06032

Major General William Cugno
Connecticut Air National Guard
360 Broad Street
Hartford, CT 06105

Paul Pernerewski
Asst. Atty. General
P.O. Box 317546
Newington, CT 06131-7546

/s/ Augustus Simmons
Augustus Simmons
P.O. Box 1
Windsor, CT 06095
(860) 569-6714

EXHIBIT NO. 1

12/23/77

Dear Mr. Rogin,

I am a totally dissatisfied individual with the "*Good Deal*" that your firm has arranged with the Dept. of Trans. concerning my property at Bradley Field.

Because everyone is now in an awkward position upon your Firm's insistence of accepting a proposal *without* the benefit of a Market Research Study by the John Rowlson Firm, I am asking the Rogin Firm to withdraw immediately so I can obtain other counsel.

On my visit to your office on Thurs Dec. 22nd, I told you I wanted to protect my rights against your recommendations. I also compiled some Data wherein I showed you and again outline a breakdown of Parcel "C"

Asking me to yield all of Parcel "A" and all Damages for absolutely nothing is not representing my best Interests.

Will appreciate an immediate withdrawal.

Parcel "C" May 1975	382.000 O Simmons
Rental May "76" to May "78" @ 20,000	60.000
Out of Pocket Expenses	82.000
	524.000

EXHIBIT NO. 2

CASE NO. 16 38 75

AUGUSTUS SIMMONS	: SUPERIOR COURT
vs.	: HARTFORD JUDICIAL DISTRICT
HORACE WETHERALL, ET AL.	: OCTOBER 15, 1991

MOTION TO TRANSFER FUNDS

Since 1978 the Clerk's Office has been the Custodian of moneys deposited in the above case. The money was to be paid out upon consummation of a transfer of certain real estate by the named plaintiff. Such a transfer has not yet occurred.

Attached to this motion are memos from the Treasurer of the State of Connecticut and from the Court Operations Unit of the Judicial Branch in explanation of this motion. The Clerk's Office requests the granting of this motion to transfer.

[off – parties have met 11/8/91 and will work out a stipulation to be presented to the court for the withdrawal of all funds and closing of file. /s/ Aronson, J. ARONSON, J. 16/8/91]

/s/ Lucian J. Jachimowicz
LUCIAN J. JACHIMOWICZ
CHIEF CLERK

ORDER

The Court, having heard ther parties, grants the motion.

_____

Judge

EXHIBIT NO. 3

STATE OF CONNECTICUT

[Name And Address Omitted In Printing]

April 5, 1977

David B. Salzman, Esq.
36 Cannon Street
Hamden, Connecticut 06514

S. Victor Feingold, Esq.
Transportation Department
90 Brainard Road
Hartford, Connecticut

Re: Docket No. 16 38 75
Simmons v. Wetherall

Gentlemen:

Judge Shapiro asked me to notify you of the dates assigned for the captioned case which are:

December, 1977	January, 1978
6	3
7	4
8	5
13	10
14	11
15	12
20	
21	
22	

the hearing to commence each day at 10:00 A.M. in Hearing Room 3, Supreme Court Building, 231 Capitol Avenue, Hartford.

Please arrange to be present with your respective clients and witnesses on the above dates.

Very truly yours,

/s/ Frances Siccarelle
Secretary to Judge Shapiro

fc

NOTE: Mr. Salzman: Will you please notify the Springfield attorney regarding these dates, as I do not have his complete name and address.

EXHIBIT NO. 4

DEPARTMENT OF COMMERCE
CIVIL AERONAUTICS ADMINISTRATION
WASHINGTON 25

GRANT AGREEMENT

Part I – Offer

CONTRACT NO. CICA 36-A

Date of Offer
January 12, 1955
Bradley Field Airport

Project No.
09-06-009-507

TO: STATE OF CONNECTICUT
(herein referred to as the "Sponsor")

FROM: The United States of America (acting through the Administrator of Civil Aeronautics, herein referred to as the "Administrator")

WHEREAS, the Sponsor has submitted to the Administrator a Project Application dated December 2, 1954 for a grant of Federal funds for a project for development of the Bradley Field Airport (herein called the "Airport") together with plans and specifications for such project, which Project Application, as approved by the administrator, is hereby incorporated herein and made a part hereof; and

WHEREAS, the Administrator has approved a project for development of the Airport (herein called the "Project") consisting of the following described airport development:

> "Acquisition of land for 'Doolittle' clear zones both ends Runway 6-24; acquisition of land and navigation easements for protection of approaches 6-24, 19, 33".

all as more particularly described in the property map and plans and specifications incorporated in the said Project Application;

NOW THEREFORE, pursuant to and for the purposes of carrying out the provisions of the Federal Airport Act (60 Stat. 170; Pub. Law 377, 79th Congress), and in consideration of (a) the Sponsor's adoption and ratification of the representations and assurances contained in said Project Application, and its acceptance of this Offer, as hereinafter provided, and (b) the benefits to accrue to the United States and the operation and maintenance of the Airport, as herein provided.

THE ADMINISTRATOR, FOR AND ON BEHALF OF THE UNITED STATES HEREBY OFFERS AND AGREES to pay, as the United States' share of the cost in accomplishing the project, 50 percent of all allowable project costs subject to the following terms and conditions:

1. The maximum obligation of the United States payable under this Offer shall be $37,000.00

2. The Sponsor shall

   (a) begin accomplishment of the Project within a reasonable time after acceptance of this Offer, and

   (b) carry out and complete the Project in accordance with the terms of this Offer, and the Federal Airport Act and the Regulations promulgated thereunder by the Administrator in effect on the date of this Offer, which Act and Regulations are incorporated herein and made a part hereof, and

(c) carry out and complete the Project in accordance with the plans and specifications and property map incorporated herein as they may be revised or modified with the approval of the Administrator or his duly authorized representatives.

3. The Sponsor shall operate and maintain the Airport as provided in the Project Application incorporated herein.

4. The maximum amounts of building space which the Sponsor shall be obligated to furnish civil agencies of the United States for the purposes and on the terms and conditions states in Paragraph 9 of Part III of the Project Application dated May 18, 1949, for Project No. 9-06-009-906-009-801 shall be as set forth in the attached schedule of maximum space requirements which is incorporated herein and made a part hereof.

5. Any misrepresentation or omission of a material fact by the Sponsor concerning the Project or the Sponsor's authority or ability to carry out the obligations assumed by the Sponsor in accepting this Offer shall terminate the obligation of the United States, and it is understood and agreed by the sponsor in accepting this Offer that if a material fact has been misrepresented or omitted by the Sponsor, the Administrator on behalf of the United States may recover all grant payments made.

6. The Administrator reserves the right to amend or withdraw this Offer at any time prior to its acceptance by the Sponsor.

7. This Offer shall expire and the United States shall not be obligated to pay any of the allowable costs of the Project unless this Offer has been accepted by the Sponsor within 60 days from the above date of Offer or such longer time as may be prescribed by the Administrator in writing.

8. It is understood and agreed that the areas delineated on Exhibit "A" as 'Doolittle' clear zones at each of the Runway 6-24 will be maintained by the Sponsor completely free from all structures except these required for aids to air navigation, unless otherwise authorized by the Administrator.

9. It is further understood and agreed by and between the parties hereto that the Project Application dated May 18, 1949 for Project No. 9-06-009-801 is hereby amended by deleting the last sentence of Paragraph 7 of Part III thereof and inserting in lieu thereof the following:

   "The airport approach standards to be followed in performing the covenants contained in this paragraph shall be those established by the Administrator in Office of Airports Drawing No. 814, dated April 26, 1950, unless otherwise authorized by the Administrator".

The Sponsor's acceptance of this Offer and ratification and adoption of the Project Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor, as hereinafter provided, and said Offer and acceptance shall compromise a Grant Agreement, as

provided by the Federal Airport Act, constituting the obligations and rights of the United States and the Sponsor with respect to the accomplishment of the Project and the operation and maintenance of the Airport. Such Grant Agreement shall become effective upon the Sponsor's acceptance of this Offer and shall remain in full force and effect throughout the useful life of the facilities developed under the Project but in any event not to exceed twenty years from the date of said acceptance.

UNITED STATES OF AMERICA
THE ADMINISTRATOR OF CIVIL AERONAUTICS

By /s/ Ora W. Young
Regional Administrator,
Region One

Part II – Acceptance

The STATE OF CONNECTICUT does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer and does hereby accept said Offer and by such acceptance agrees to all of the terms and conditions thereof.

Executed this 1st day of February 1955.

STATE OF CONNECTICUT
(Name of Sponsor)

By /s/ K.H. Ringrose
Title Director of Aeronautics

(SEAL)

Attest: /s/ Mildred P. Allen

Title: Secretary of State

CERTIFICATE OF SPONSOR'S ATTORNEY

I, Jack Rubin, acting as Attorney for STATE OF CONNECTICUT, ~~go here to certify~~: (herein referred to as "Sponsor"), to hereby certify:

That I have examined the foregoing Grant Agreement and the proceedings taken by said Sponsor relating thereto, and find that the Acceptance thereof by said sponsor relating thereto, and find that the Acceptance thereof by said Sponsor has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the State of Connecticut, and further that, in my opinion, said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Dated at HARTFORD, CONNECTICUT this 1st day of February, 1955.

/s/ Jack Rubin
Title Assistant
Attorney General

EXHIBIT NO. 5

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

NEW ENGLAND REGION
154 MIDDLESEX STREET
BURLINGTON, MASS. 01803
Tel. 617 223-2271

26 May 1971 (LOGO)

Mr. Augustus J. Simmons
580 Park Avenue
Windsor, Connecticut 06095

Dear Mr. Simmons:

Your letter of 28 April 1971 has been referred to this office for reply to the question concerning the status of federal funding insofar as it relates to Bradley Field, Windsor Locks, Connecticut. The State of Connecticut, under a Grant Agreement issued under Federal Aid Airport Program, Project No. 9-06-009-5708 has been obligated to acquire your property in addition to other properties under separate ownerships. The State has acquired all other properties but has, to date, not succeeded in obtaining adequate interest in your property due, of course, to the litigation arising over the several attempts of the State to condemn the necessary land interests.

This agency has not withheld funds from the State under the project. We have, in fact, participated to the fullest extent under our regulations in all other costs incurred except of course, costs related to the acquisition of your property. We have administratively determined to reserve rights for the State of Connecticut to request federal participation in the costs of acquiring your land, after it has been accomplished successfully.

While we understand your anxiety to retain possession of your land, the acquisition for the benefit of Bradley Field has been considered to be overriding. Consequently, our agency favorably reviewed the State's request for federal aid. The material submitted with your correspondence is returned herewith.

Sincerely,

/s/ [Illegible]
J.B. KOMICH
for acting Chief, Airports Division, NE-600

Enclosures

EXHIBIT NO. 6

STATE OF CONNECTICUT

SUPREME COURT

No. HHD CV70-0163875S

AUGUSTUS J. SIMMONS

v. : **MAY 31, 2000**

HORACE B. WETHERALL
ET AL.

ORDER

THE MOTION OF THE PLAINTIFF, FILED MAY 1, 2000, TO VACATE, HAVING BEEN PRESENTED TO THE COURT, IS HEREBY ORDERED **DISMISSED.**

IT IS FURTHER, ORDERED THAT THE PLAINTIFF IS HEREBY PROHIBITED FROM FILING PLEADINGS IN THIS COURT THAT ARE RELATED TO DOCKET NUMBER CV70-0163875.

BY THE COURT,

/s/ Francis Drumm
CHIEF CLERK

NOTICE SENT: MAY 31, 2000
AUGUSTUS SIMMONS, PRO SE
PAUL K. PERNEREWSKI, ASSISTANT ATTORNEY GENERAL
ROGIN, NASAU, CAPLAN, LASSMAN & HIRTLE
CLERK, HARTFORD J.D.
HON. JOHN J. LANGENBACH

Exhibit No. 7

March 29, 2005

Alan M. Gannuscio
Assistant Clerk, Supreme Court
231 Capitol Avenue
Hartford, CT 06106

RE: AC~~24136~~ 24163 State of Connecticut v. Augustus Simmons

Dear Mr. Gannuscio:

Mr. Augustus Simmons responding to your letter of March 21, 2005, that my non-complying petitions for certification were returned on February 2, 2005 and February 22, 2005 and any – resubmitted petition must show that the petition was filed and date stamped by the Clerk of the Superior Court on or before the extended filing date of February 2, 2005 is sheer DOUBLE TALK.

There were some problems in the time sequence, some of which were beyond my control, but I am not relying on excuses, where this Supreme Court has *NO JURISDICTION.*

At issue is the malicious prosecution, in several instances besides the above docket number against the UNCONTESTED, SUPERIOR COURT ACKNOWLEDGED, STATE ACKNOWLEDGED (Attorney. General's Office), OWNER, TITLE-HOLDER with several outstanding liens against the FEDERAL-AID, FEDERAL PROJECT real properties and per chapter 17 of Practice book, *ALL* decrees, judgments involving real property are to be made exclusively by the Superior Court, and, where there is *NO*, docket number; *NO* proceedings initiated by the airport authority for subject matter jurisdiction by the

court (including Connecticut Supreme court); *NO* notices or service of process – actual or constructive – or return of service to the Superior court [Lynch v. Household Fin. 405 U.S. 538 (1972)] [Pennoyer v. Neff, 95 U.S. 714 (1877)]; *NO* hearings – where "the fundamental requisite of due process of law is the opportunity to be heard" *Grannis v. Ordean*, 234 U.S. 385, 394, 34 S. CT. 779, 783, 58 L. Ed. 1363; *NO* appraisals or valuations of land or structures – or – written statements of compensation that are mandatory where FEDERAL-AID and/or FEDERAL PROJECTS are at issue; *NO* compliance with applicable FEDERAL and STATE requirements for negotiations to settle as to vest jurisdiction in respondent airport and highway authority; *NO* way can the Connecticut Supreme Court render a valid eminent domain decree involving Federal Project Real Property under *Simmons v. Wetherall*, #163875 [Special Act #170 (1969)] tort action where they knew, or, should have known that it is not an AUTHORIZING STATUTE; *NO* way would the Superior Court Clerk's Office accept Plaintiff/Owner's complaint stating it was strictly a SUPREME COURT MATTER; *NO* way can Plaintiff/Owner confer subject matter jurisdiction by consent or contract upon his discharged, withdrawn, disqualified, corrupt private counsel, [*Simmons v. State* 160 Conn. 492 (1971)].

NO WAY can or should the Connecticut Supreme Court have sanctioned such VEXATIOUS – VICIOUS – MALICIOUS – TORTIOUS – IN BAD FAITH – UNCONSTITUTIONAL ACTS where Federal Aid real property is at issue, by Plaintiff's counsel against their own client, acting in concert, collusion, conspiracy with the respondent airport and highway authority to:

A.) Having presumably entered in good faith to a 38% contingency contract on December 8, 1977 and BADGERED, ENTRAPPED, DECEIVED into being told that the two FEDERAL COURT actions must be *WITHDRAWN* on December 12, 1977 (before filing an appearance in State Court on December 13, 1977) *BEFORE* an offer could be made – not being aware that it was an INTENT TO DEFRAUD where one action was against the United States (F.A.A.) and the other action was remanded in a published opinion [472 F2d 509 (1973)] by the 2nd Circuit of New York confirming a valid Civil Rights Action under § 1983.

B.) Having filed an appearance on December 13, 1977 and again BADGERED, ENTRAPPED, DECEIVED into being told that there must be a signature on a "COMBINING OF CASES", not being aware that it was an INTENT TO DEFRAUD AND CONCEAL Docket #162923, referenced in 472 F 2d 509, granting compensation and mandating the trespasser airport authority curtail, stop, eliminate the "LEASING" of private property they do not own nor never legally acquired – to the F.A.A.

C.) Having agreed, presumably in good faith, on December 8, 1977, to pursue DAMAGES and ASCERTAINMENT of JUST COMPENSATION against fifteen (15) days already scheduled by Referee Shapiro for hearings and the first shot out of the cannon, after filing an appearance on December 13, 1977 was to ANNIHILATE, EXTERMINATE all hearing dates, denying a "Day in Court" in defiance of mandatory federal law on all states by Congress with the enactment of the "UNIFORM ACT" [42 USC §§ 4601-4655 (1971)].

D.) *JURISDICTION*, when raised, no matter in what form, must be addressed. For what purpose does the OWNER/PLAINTIFF/DEFENDANT question the jurisdiction of the SUPREME COURT?? Solely to show that its record is, in truth, *NO RECORD*.

E.) It was absolute, unequivocal, gross egregious ERROR for the Connecticut Supreme Court to totally and completely disregard the actions of the Superior Court below, who, rejected the CHAMPTEROUS COURSE OF CONDUCT of disqualified private counsel putting encumbrances against the properties almost three (3) decades ago and nary a single hearing that was addressed by the U.S. Supreme Court under *Connecticut v. Doehr*, (501) U.S. 1, 111 S. CT. 2105, 115 L. Ed. 2d 1 (1991), mandating removal.

F.) Where, as a result of A, B, C & D, Plaintiff/Owner put a "LEGAL END" to the representation of the Rogin-Hirtle Law Firm with a DISCHARGE, hand delivered on December 23, 1977, and, the law firm confirmed the legal end with a "LEGAL WITHDRAWAL" from Simmons' matters on April 19, 1978, upon failure to get deeds or rights to the real properties, and, the Supreme Court of Connecticut was proceeding with "pie on its face" when the Owner questioned the Chief Clerk of Superior court, named Lucian, as to: How could the Supreme Court of Connecticut be proceeding with no case before the Court?? – the answer – "The Supreme Court has "pie on its face"." Lucian is now retired and can be quoted without harm.

G.) Has there, Is there, Was there, deliberate, intentional, malicious, unconstitutional "ECONOMIC COERCION" by the Supreme Court of Connecticut against

the Owner because of the geographical location of the real property and the answer is "YES", is substantiated by the course of action relative to the widening of Route #20 being widened from a two lane to four lane in Town of East Granby in *1989* and an 18 foot easement taken from each and every landowner, both sides of the highway – *EXCEPT* the property of Plaintiff/Owner Simmons. All actions initiated against such confiscation end up getting DISMISSED – due to a previous decision by the State Supreme Court.

ANSWER TO TIME ELEMENT

Where the Plaintiff/Defendant/Owner/Title Holder alleges there *IS NOT, WAS NOT, HAS NOT,* been any court proceedings instituted in any state or federal court against the acquisition of the subject matter Federal Project Real Property with federal installations thereon since the reverting of ownership after two (2) failed condemnations, by State Superior court and recorded on Town of East Granby, CT land records on March 24, 1972, or, the REMAND (472 F. 2d. 509) decided on January 17, 1973; Plaintiff/Defendant alleges, *BOTH,* the Federal Agency (F.A.A.) and the State Agency (Connecticut Department of Transportation) became *TRESPASSERS – AB INITIO* after March 24, 1972, neither Federal or State Agencies having ever made any fair market valuations or paid any fair and just compensation, or, initiated any proceedings for subject matter jurisdiction and/or jurisdiction of all interested and necessary parties.

Where this illegal, unlawful, unconstitutional "LAND-GRAB" of February 1, 1991 between Connecticut Department of Transportation and Air National Guard *HAS NOT*

been seized for any purpose or use, other than just put up a fence, this letter being sent to principals and interested parties is *NOTICE* to secure the airport with a fence on state-owned property – within the next ninety (90) days.

After ninety (90) days, I intend to use such force as is necessary to recover all of Parcel "A" that has several liens outstanding on the land records.

That the Government (F.A.A.) is bound to make just compensation for whatever it shall take from the individual is undoubted; and in the words of the Supreme Court in *Great Falls Manufacturing Co. v. Attorney General*, 124 U.S. 596, 8 Sup. CT. Rep. 631: 'It is to be assumed that the United States is incapable of bad faith, and that Congress will promptly make the necessary appropriations whenever the amount of compensation has been ascertained in the mode prescribed.' After forty-three (43) years of exclusive possession and use without ever offering, paying, or depositing A DIME, shatters the above assumption to smithereens and is the precise reason for a copy of this letter where the Court of Claims denied compensation as a result of a purported judgment by Plaintiff's corrupt, rotten-to-the-core, discharged, vexatious, malicious, tortious, unconstitutional, champterous, conduct of which there is no record before the Court of First Jurisdiction – but – was given the Pope's Blessing by the State Supreme Court.

Respectfully Submitted,

/s/ Augustus Simmons
Augustus Simmons
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

Copies to:

Erik T. Lohr
Office of Chief State's Attorney
300 Corporate Place
Rocky Hill, CT 06067

Marion C. Blakey
Federal Aviation Administrator
800 Independence Ave. S.W.
Washington, D.C. 20591

Stephen E. Korta II, Commissioner
Connecticut Department of Transportation
2800 Berlin Turnpike, P.O. 317546
Newington, CT 06131-7546

Rogin, Nassau, Caplan, Lassman & Hirtle, Esq.'s
City Place 1
Hartford, CT 06106

John Malone, Esq.
State Attorney's Office
111 Phoenix Ave.
Enfield, CT 06082

Tom Byrne, Esq.
2-E Farmington Commons
790 Farmington Ave.
Farmington, CT 06032

Major General William Cugno
Connecticut Air National Guard
360 Broad Street
Hartford, CT 06105

Paul Pernerewski
Asst. Atty. General
P.O. Box 317546
Newington, CT 06131-7546

Chief Clerk, Superior Court
95 Washington Street
Hartford, Connecticut 06106

(To be put in file of Docket #163875)

/s/ Augustus Simmons
Augustus Simmons
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

Supreme Court, U.S.
FILED

No. 041645 MAY 23 2005

OFFICE OF THE CLERK

In The

Supreme Court of the United States

AUGUSTUS SIMMONS,

Petitioner,

vs.

SUPREME COURT OF CONNECTICUT,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Connecticut

SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI

AUGUSTUS J. SIMMONS
P.O. Box #1
Windsor, CT 06095
(860) 569-6714
Owner-Title Holder

****

The "officially released" date that appears near the beginning of each opinion is the date the opinion will be published in the *Connecticut Law Journal* or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the "officially released" date appearing in the opinion. In no event will any such motions be accepted before the "officially released" date.

All opinions are subject to modification and technical correction prior to official publication in the Connecticut Reports and Connecticut Appellate Reports. In the event of discrepancies between the electronic version of an opinion and the print version appearing in the Connecticut Law Journal and subsequently in the Connecticut Reports or Connecticut Appellate Reports, the latest print version is to be considered authoritative.

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CONNECTICUT APPELLATE COURT

STATE OF CONNECTICUT *v.* AUGUSTUS J. SIMMONS
(AC 24163)

Lavery, C. J., and Foti and Schaller, Js.

Argued September 23 – officially released December 14, 2004

(Appeal from Superior Court, judicial district of Hartford, geographical area number thirteen, Cofield, J.)

Augustus J. Simmons, pro se, the appellant (defendant).

Erik T. Lohr, special deputy assistant state's attorney, with whom were *James E. Thomas*, state's attorney, and *Christopher Parakilas*, supervisory assistant state's attorney, for the appellee (state).

Opinion

FOTI, J. The pro se defendant, Augustus J. Simmons, appeals from the judgment of conviction, rendered after a trial to the court, of breach of the peace in the second degree in violation of General Statutes § 53a-181,[1] disorderly conduct in violation of General Statutes § 53a-182[2]

[1] Although the charging document does not refer specifically to a subsection of General Statutes § 53a-181, the record reflects, and the state agrees, that the defendant was convicted under § 53a-181(a)(1), which provides: "A person is guilty of breach of the peace in the second degree when, with intent to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof, such person . . . [e]ngages in fighting or in violent, tumultuous or threatening behavior in a public place. . . ." The court specifically referred to the provisions of this subsection of the statute in making its findings and rendering its guilty verdict.

[2] Although the charging document does not refer specifically to a subsection of General Statutes § 53a-182, the record discloses that the court, while not so specifying, implicitly found the defendant guilty

(Continued on following page)

and interfering with an officer in violation of General Statutes § 53a-167a.[3] On appeal, the defendant claims that (1) the evidence was insufficient to sustain his conviction with regard to each of the offenses, (2) the conviction of breach of the peace and disorderly conduct violated his constitutional right to free speech and (3) the court abused its discretion in permitting the state to amend the information, thereby adding new charges, prior to trial.[4] Additionally, we notified the parties to be prepared to address at oral argument the issue of whether, under the circumstances of this case, disorderly conduct constituted a lesser included offense of breach of the peace in the second degree. We reverse in part the judgment of the trial court.[5]

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under § 53a-182(a)(1), which provides: "A person is guilty of disorderly conduct when, with intent to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof, such person . . . [e]ngages in fighting or in violent, tumultuous or threatening behavior. . . ."

[3] General Statutes § 53a-167a(a) provides in relevant part: "A person is guilty of interfering with an officer when such person obstructs, resists, hinders or endangers any peace officer . . . in the performance of such peace officer's . . . duties."

[4] In his brief, the defendant also alleges that he owns the property upon which the incident underlying this appeal occurred and that he therefore had a right to restrict access to the property in the manner in which he did. This is not a legitimate issue in this case, and we decline to address it.

[5] The court also found that the defendant was in violation of his probation. The court imposed a total effective sentence of one year imprisonment. Although the defendant has been released from incarceration and his sentence has expired, this matter is not moot. See *State v. McElveen*, 261 Conn. 198, 213-16, 802 A.2d 74 (2002); *Barlow v. Lopes*, 201 Conn. 103, 112, 513 A.2d 132 (1986); *State v. Scott*, 83 Conn.App. 724, 726-27, 851 A.2d 353 (2004).

On the basis of the evidence presented at trial, the court reasonably could have found the following facts.[6] At approximately 6:50 p.m. on March 14, 2003, Matthew Freiman and Justin Shaw, both of whom were acting in their capacities as members of the Connecticut Army National Guard, were conducting routine security patrols around the perimeter of Bradley International Airport in Windsor Locks. Freiman and Shaw were in uniform and were traveling in a camouflaged pickup truck. The guardsmen drove across a spectator lot, where members of the public are permitted to observe airplanes taking off and landing. The guardsmen stopped their vehicle when they observed a rope, strung between a security fence and a post, blocking their path of travel around the perimeter of the airport. The defendant had assembled this obstacle. The guardsmen immediately encountered the defendant as he approached their vehicle. The defendant was flailing his arms and yelling.

When the defendant approached the truck, he shouted profanities at the guardsmen; he told them that they were on his property and that military personnel did not belong there. Freiman identified himself and attempted to calm the defendant. Unsure of the defendant's motives, the guardsmen reported the defendant's actions to their superiors and left the scene. Michael Allard, a state police trooper, responded to the scene shortly thereafter. When Allard asked the defendant what had transpired, the

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[6] The record does not contain either a written memorandum of decision or a signed transcript of proceedings in which the court stated its decision orally. The defendant, however, has filed an unsigned transcript that contains the court's oral decision in this matter, and we deem this transcript to be a sufficient basis upon which to review the court's findings and legal conclusions.

defendant stood face-to-face with Allard and, using profanities, shouted that he was on his own property, that he could do whatever he wanted to do and that Allard had no right to be there. Allard requested that the defendant step back and submit to a patdown search. The defendant did not comply with this request and continued to speak to Allard in an agitated tone, flailing his arms as he did so. Allard attempted physically to force the defendant to turn around, but the defendant resisted. Allard ultimately restrained the defendant and conducted a patdown search, despite the defendant's physical and verbal protests. Kenneth Hardick, another police trooper who arrived on the scene during the struggle, subsequently arrested the defendant.

I

The defendant first claims that the evidence was insufficient to convict him of any of the three crimes of which he stands convicted. We disagree.[7]

"In reviewing the sufficiency of the evidence to support a criminal conviction we apply a two-part test. First, we construe the evidence in the light most favorable to sustaining the verdict. Second, we determine whether upon the facts so construed and the inferences reasonably drawn therefrom the [finder of fact] reasonably could have

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[7] We determine, in part IV, that disorderly conduct is a lesser included offense of breach of the peace in the second degree. We determine, in part IA, that the evidence was sufficient to convict the defendant of breach of the peace in the second degree. Having determined that the evidence was sufficient to convict the defendant of this greater offense, we likewise conclude that the evidence was sufficient to convict the defendant of the lesser offense of disorderly conduct.

concluded that the cumulative force of the evidence established guilt beyond a reasonable doubt. . . .

"We note that the [fact finder] must find every element proven beyond a reasonable doubt in order to find the defendant guilty of the charged offense, [but] each of the basic and inferred facts underlying those conclusions need not be proved beyond a reasonable doubt. . . . If it is reasonable and logical for the [fact finder] to conclude that a basic fact or an inferred fact is true, the [fact finder] is permitted to consider the fact proven and may consider it in combination with other proven facts in determining whether the cumulative effect of all the evidence proves the defendant guilty of all the elements of the crime charged beyond a reasonable doubt. . . .

"Moreover, it does not diminish the probative force of the evidence that it consists, in whole or in part, of evidence that is circumstantial rather than direct. . . . It is not one fact, but the cumulative impact of a multitude of facts which establishes guilt in a case involving substantial circumstantial evidence. . . . In evaluating evidence, the [finder] of fact is not required to accept as dispositive those inferences that are consistent with the defendant's innocence. . . . The [finder of fact] may draw whatever inferences from the evidence or facts established by the evidence it deems to be reasonable and logical. . . . Our review is a fact based inquiry limited to determining whether the inferences drawn by the [finder of fact] are so unreasonable as to be unjustifiable." (Citation omitted; internal quotation marks omitted.) *State v. Carcare*, 75 Conn.App. 756, 778-79, 818 A.2d 53 (2003).

A

We first consider the defendant's claim that there was insufficient evidence to convict him beyond a reasonable doubt of breach of the peace in the second degree. The state bore the burden of proving beyond a reasonable doubt that (1) the defendant engaged in fighting or in violent, tumultuous or threatening behavior, (2) that this conduct occurred in a public place and 3) that the defendant acted with the intent to cause inconvenience, annoyance or alarm, or that he recklessly created a risk thereof.

Here, the court specifically found that the defendant intentionally acted in an aggressive and threatening manner. In this regard, the court found that the defendant aggressively approached the guardsmen while flailing his arms and that he spoke to them in a loud voice, shouting profanities and ordering them off of the property. The court found that the defendant's conduct caused the guardsmen "to fear that something might happen," and motivated them to leave the scene of their assigned duties. The court also found that the defendant's conduct occurred in a public place in that the spectator lot is property maintained for use by the public. All of the court's findings in this regard are supported by the evidence presented at trial.

Further, the record supports the court's finding that the defendant engaged in such conduct intending to cause inconvenience, annoyance or alarm. "[I]ntent is generally proven by circumstantial evidence because direct evidence of the accused's state of mind is rarely available. . . . Therefore, intent is often inferred from conduct . . . and from the cumulative effect of the circumstantial evidence and the rational inferences drawn therefrom." (Internal

quotation marks omitted.) *State v. Weaver*, 85 Conn.App. 329, 344, 857 A.2d 376 (2004). The defendant testified that his goal was to expel the guardsmen from the spectator lot. The defendant's tumultuous and threatening behavior clearly supported the court's finding beyond a reasonable doubt that the defendant intended to cause inconvenience, annoyance or alarm.

B

The defendant next claims that the evidence did not support his conviction of interfering with an officer. The state bore the burden of proving beyond a reasonable doubt that (1) the defendant obstructed, resisted, hindered or endangered any peace officer and (2) that such conduct occurred in the performance of the peace officer's duties.

Our review of the record discloses that the evidence was sufficient to support the conviction. Allard testified that when he arrived at the spectator lot, he encountered the defendant, who was sitting in a vehicle. Allard recalled that when he asked the defendant what had occurred, the defendant exited his vehicle and "got into [his] face so close that [he] felt that it was necessary to have [the defendant] back away." The defendant responded to Allard's inquiries by using profanities and demanding that Allard leave the property. Allard further testified that, when he instructed the defendant to calm down and to turn around so that he could conduct a patdown search, the defendant refused to comply. Allard also testified that he attempted physically to turn the defendant around and that the defendant pulled away from him. Finally, Allard testified that he had to use physical force to restrain the defendant against the front of his vehicle because of the

defendant's continued efforts to get away from him. Allard's account of the defendant's behavior as hostile, aggressive and noncompliant with his demands was corroborated by the testimony of other police officers who arrived on the scene during these events. In addition to making findings concerning the defendant's conduct, the court found that Allard was in uniform and in the performance of his official duties as a state trooper. These findings are also supported by the evidence presented at trial.

Accordingly, the evidence amply supported the court's findings beyond a reasonable doubt that the defendant's actions impeded, and therefore hindered, Allard's performance of his duties as a police officer assigned to investigate the incident at the spectator lot.

II

The defendant next claims that his conviction for breach of the peace violated his constitutional right to free speech. This claim is totally without merit. The record reflects that the court's judgment was based on the defendant's conduct and not his speech. Although the court, in its decision, referred to the defendant's use of profanity, it clearly did so because the defendant's use of profanity was a component of his hostile and aggressive conduct. For instance, the court referred to the fact that the defendant's use of profanity, combined with his physical movements and the fact that he was yelling at the guardsmen, caused the guardsmen to fear the defendant and to leave the scene. The record reflects that the court deemed the defendant's conduct to be the only appropriate consideration in finding that he had violated the breach of the peace statute.

III

The defendant next claims that the court abused its discretion in allowing the state to amend the information prior to trial. We disagree.

The record reflects that the defendant was initially charged with breach of the peace in the second degree. Prior to the start of trial, the state filed a subsequent information that included the charges of disorderly conduct and interfering with an officer.[8]

A prosecutor has broad authority to amend the information, prior to the commencement of trial pursuant to Practice Book § 36-17.[9] *State v. Grant*, 83 Conn.App. 90, 97, 848 A.2d 549, cert. denied, 270 Conn. 913, 853 A.2d 529 (2004). The defendant has failed to carry his burden of demonstrating that the court abused its discretion by permitting the state to file the substitute information.

IV

We next consider whether, under the circumstances of this case, disorderly conduct is a lesser included offense of breach the of peace in the second degree.

Generally, the *Blockburger* test is used to determine if an offense is a lesser included offense and therefore the

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[8] The record reflects that, after the state filed its substitute information, the court informed the defendant that it would grant the defendant a continuance to permit him to consult with an attorney. The defendant declined this invitation and did not request that the court grant him a continuance.

[9] Practice Book § 36-17 provides in relevant part: "If the trial has not commenced, the prosecuting authority may amend the information, or add additional counts, or file a substitute information. . . ."

same offense for double jeopardy purposes. See *Blockburger v. United States*, 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306 (1932). "First, the charges must arise out of the same act or transaction. Second, it must be determined whether the charged crimes are the same offense. Multiple punishments are forbidden only if both conditions are met. . . . [W]here the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not. . . . In conducting this inquiry, we look only to the relevant statutes, the information, and the bill of particulars, not to the evidence presented at trial." (Citations omitted; internal quotation marks omitted.) *State v. Denson*, 67 Conn.App. 803, 808-809, 789 A.2d 1075, cert. denied, 260 Conn. 915, 797 A.2d 514 (2002).

Because the state did not file a long form information and the short form informations do not set forth the facts underlying the charges, we will examine the record to determine whether the charged offenses arose out of the same act or transaction. The court explained that it was using the same actions by the defendant as the basis for its finding with regard to the breach of the peace and disorderly conduct charges. Accordingly, we conclude that the first prong of *Blockburger* is satisfied.

The second prong of *Blockburger* concerns whether each statutory violation requires proof of a fact that the other does not. General Statutes § 53a-181(a)(1) provides in relevant part: "A person is guilty of breach of the peace in the second degree when, with intent to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof, such person . . . [e]ngages in fighting or in violent, tumultuous or threatening behavior in a public place. . . ."

General Statutes § 53a-182(a)(1) provides in relevant part: "A person is guilty of disorderly conduct when, with intent to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof, such person ... [e]ngages in fighting or in violent, tumultuous or threatening behavior. ... " It is clear that the only difference between the two statutes is that the breach of the peace statute requires that the proscribed conduct occur in a public place. The disorderly conduct statute does not require proof of any fact not also required for conviction under the breach of the peace statute.

Here, it is clear that the court used the same facts to convict the defendant of the two charges. After finding the defendant guilty of breach of the peace, the court stated: "And as it relates to disorderly conduct, the elements they are essentially the same as breach of the peace, however, there is no requirement that the conduct [be in] a public place although that certainly is not an issue for this because I have found it was in a public place and that you were engaging in fighting, violent, tumultuous, or threatening behavior, that is, as it relates to these police officers, once again, flailing your arms, which was testified [to] by the officer."

Under the facts of this case, we conclude that it was not possible to commit the offense of breach of the peace in the second degree without having first committed the offense of disorderly conduct. Accordingly, these two offenses stand in the relationship of greater and lesser included offenses.

"It is well established that if two offenses stand in the relationship of greater and lesser included offense, then [t]he greater offense is ... by definition the same for

purposes of double jeopardy as any lesser offense included in it." (Internal quotation marks omitted.) *State v. Porter*, 76 Conn.App. 477, 485, 819 A.2d 909, cert. denied, 264 Conn. 910, 826 A.2d 181 (2003). The defendant's convictions on these two charges violated the constitutional prohibition against double jeopardy. "[T]he remedy in a case such as this is to combine the conviction on the lesser included offense with the conviction on the greater and to vacate the sentence on the lesser included offense." (Internal quotation marks omitted.) Id., at 486, 819 A.2d 909.

The judgment is reversed in part and the case is remanded with direction to combine the conviction of disorderly conduct with the conviction of breach of the peace and to vacate the sentence on the conviction of disorderly conduct. The judgment is affirmed in all other respects.

In this opinion the other judges concurred.

Appellate Court
Hartford County
At Hartford, Connecticut

State of Connecticut

V.

Augustus J. Simmons

Case No. AC 24163

September 23, 2004

Before:

The Honorable William J. Lavery, Chief Judge, Presiding
The Honorable Paul M. Foti, Judge
The Honorable Barry Shaller, Judge

Appearances:

For the Appellant:
Augustus Simmons, Pro Se

For the Appellee:
Attorney Erik T. Lohr,
Special Deputy Assistant State's Attorney

[1] JUDGE LAVERY: Good afternoon, ladies and gentlemen. Welcome to the Appellate Court. Each side will receive 20 minutes to make their argument. The appealing side, that is, the appellant, may reserve as much time as it wishes for rebuttal. Please identify yourself before proceeding. If you are a pro se, that is, you're not a licensed lawyer in the State of Connecticut, and you're representing yourself, please let us know.

Now, the first case on this afternoon's docket is *State v. Simmons*, 24163. All right.

MR. SIMMONS: May it please the Court, my name's Augustus Simmons. I'm appearing pro se in this matter of Simmons – *State v. Simmons.* I –

JUDGE LAVERY: Mr. Simmons, without counting against your time, did you receive – because you're pro se – the message where we requested that – does disturbing – breach of peace and disorderly conduct merge under lesser included offense. Did you get that message?

MR. SIMMONS: There was a message left on my phone. Yes, Your Honor.

JUDGE LAVERY: All right, thank you. I just wanted to make sure you were aware, sir. All right, sir, I'll start your time from now.

MR. SIMMONS: Am I correct, Your Honor, in – when you said that I have ample time for rebuttal?

[2] JUDGE LAVERY: You – you have total of 20 minutes.

MR. SIMMONS: I would like five minutes of rebuttal time.

JUDGE LAVERY: So, I'll – I'll – at 2:20, I will say to you, you have five minutes left.

MR. SIMMONS: Thank you.

JUDGE LAVERY: But that you can use any way you want. As rebuttal, or go straight ahead. Okay?

MR. SIMMONS: All righty.

JUDGE LAVERY: Thank you, sir.

MR. SIMMONS: Your Honors, the first matter that needs attention in this whole matter, is whether or not this Court has jurisdiction to even hear this case. The fact of the matter is, in forty – since 1942, since 1972, there is not – there has not been any kind of mesne

process, initiated relative to this land, this property up at Bradley Field.

We've gone far afield, far astray, and including this Appellate Court, has issued sanctions, all kinds of verdicts, negative decisions, denials, dismissals. Same with the Supreme Court. They rendered a decision against – against the plaintiff – against the defendant, with no case before the Court. Absolutely none. There has never been any mesne process started since the property – and this goes back to 1962, we went through two condemnations, they – both condemnations were ruled null and void. The property [3] got put back in my name, which was certainly in error, and since it got put back into my name, there is not any case before any court in this United States, including Hartford County, that this Court could act upon.

The – the statute is very clear, I believe it's 8-164. Under the practice book it's relative to land. Whenever there's – land in dispute – whatever the judge's decision is, you hand that decision over to the clerk of the court, and it becomes a matter for – with the clerk of the court, indefinitely. There is not any kind of a decis – there's not any kind of a – a action relative to that land with the clerk of this court since 1972.

I raise these questions because it goes to the very heart of why – why the defendant in this case acted the way he did. Being charged with breach of the peace and disorderly conduct, and interfering with an officer. It makes no difference to me whether it gets combined or not, I know what I said. The whole basic question in this matter is, did I have a right, a constitutional right, as the owner of that property, to order somebody off the property that I didn't want on there – who was a trespasser. And as

far as I'm concerned, I know what I said. I said "Hey, you two fellas, out of here". And that was the extent of it. And to read such a disgusting trash-filled brief by [4] the state, and I cannot read what's in here because of the people that are in here, but it's "F this", and "F that", and "MF this" and "MF that" – I've never used them words in my life, it's not in my vocabulary.

That has been the gist of this whole situation from day one. Dirty tricks, dirty pool, the bottom line is, Your Honors, 42 years, I've been flying these planes in and out of Bradley Field, with the instrumentation that's on that property, and to this day, I have not been paid one dollar. And this lien was on there, for the first ten years I had Attorney Tom Byrne was representing me, and he's listed on here as a lien-holder. And he's got to be notified and paid before – under statute 48-21 before the owner gets paid. So how long can this thing go on? What's fair here? Where's justice?

When I – when I instructed my attorney, who then was Geoff Naab from Manchester, to defend me in the original action, I told him, in no uncertain terms, the answer is – my defense is that there has not been any action of any kind initiated before this Court since 1972. I came into Court here and I was sitting in the back here and I got livid when I heard this Appeals Court, castigate him saying: Hey, there's a judgment – a judgment a of Mr. Rogin.

Judgment. Your Honors, you know very well what a judgment requires. It requires three essentials: [5] jurisdiction over the subject matter, jurisdiction of the parties, and jurisdiction of the process. I'm going to read a matter

on jurisdiction that I think is very apropos, that fits my situation very well.

"Jurisdiction of the subject matter is the power to deal with the general abstract question, to hear the particular facts in any case relating to this question, and to determine whether or not they are sufficient to invoke the exercise of that power. *Foltz v. St. Louis*, 60f 316. But, before this potential jurisdiction of the subject matter, this power to hear and determine, can be exercised, it must be lawfully invoked and called into action. The parties and the subject matter of this particular case must be brought before the Court in such a way that it acquires the jurisdiction and the power to act. There must be a right in dispute between two or more parties. A proceeding commenced under the proper rules of law. Process must be served on the opposite party, or parties, in order that they may have an opportunity to be heard. Or the property, if that be the subject matter of that action, must be within such jurisdiction. And the owner or person having the right to claim it or be heard, must be notified as required by law, or the pendency of the proceedings. Brown, on jurisdiction, 2 and 9, 15cj 734 797."

I got to say to this Court, I've never had a day in [6] court since 1972. I've never been notified of any kind of an action before the Court. Rogin-Hirtle did stick an action on the court, but he never – under Simmons v. Wetherell, which is a tort action, but he never – the name of the case was Simmons v. Wet erell, but he never listed the owner. I – I'm the party that's involved. He never listed the Federal Aviation Administration.

And, Your Honors, I filed a – it's been a perpetual thing, and talk about expense – I filed a motion, September the

13th, 2004, with this Court here, downstairs, motion to quash a writ and an injunction. And I get the usual reply. No. You had an action – you had a decision against you by Judge Satter. You had a – you had sanctions issued by the Appellate Court. And the Connecticut Supreme Court said, in May 30th-31st, of 2000, you cannot bring any more actions under – under your tort action. Never had a day in court – nothing. But you cannot bring any more actions. And this Court saying it – sanctions, sanctions. Where the hell is the action? I – I am not going to accept this business of you're not supposed to embarrass the Supreme Court. I know that's an old axiom and for several years I tried to refrain, with filing all kinds of motions and whatnot to try to get some resolution out of this. And no way. And it's reached the point now where, [7] let's call up the Hartford Courant, or New York Times, or Sixty Minutes, so – instead of putting that adverse publicity in the paper like they did a few – a couple of weeks or so: Hey, he got put in jail again.

It's bad enough that I didn't get paid one dollar. All these months that I spent in prison. My social security got deducted. My medicare got deducted. At my age? I'm a young 84, and I feel 48, and I'm ready for another 20 years with the state if they think that they're going to wear me down. Nowhere in the history of this United States has there been such a – a miscarriage of justice as there is in this case here.

And now we get to the matter of this fella – these two fellas, from the Air National Guard, and I feel sorry for them. They're really not the – they're really not the culprits. They're victims of circumstances. Victims of circumstance to the extent that the Connecticut Department of Transportation has for 20, 30 years from – from when the

condemnations have flunked out – they've been leasing my property to the FAA – certifying – warranting that they have acquired and possessed a legal right to be entering into leases. And the FAA, from day one they went in and occupied the territory, never approached me, never offered one dollar. To this day they have not paid one dollar, to me, to the state, or to – or into the [8] Federal court. And I got to keep flying the planes in and out for the primary runway at Bradley Field.

So the National Guard, the air – Connecticut Department of Transportation leases some of my – what is known as parcel A – to the Air National Guard. After the National Guard put the fence up, and I had been arrested so many times already, and put in prison. I lost count of how many times I been in there. They put the fence up but I said "Look, I've got several lien holders on here". The next day they – after the fence went up they went to the town records and found out I had 15 lien-holders on that property. And they have not put that property to use to that – to this day. And all – 90 percent of them trees that are on that lot are still standing, because they don't dare cut them down because they know they don't belong there. They – they were supposedly given a green light by the Department of Transportation, who don't own it – never acquired it. Who never initiated any action of any kind to acquire it.

So, these two fellas come cruising through, and I say "Hey, you two fellas, out of here". What's wrong with that? It's certainly is constitutional. It's my property. And you got to keep in mind that we're near an airport. You got the jet planes, and whatnot. Am I supposed to say to them, in a hushed tone "Will you [9] two nice little gentlemen, please don't come on the property". With the roar of the

planes – when the planes taking off, you hear the exhaust – almost deafening, but the – these two individuals were on the move. And to castigate the – put the – put a bunch of trash in the record the way this is, it's – it's nothing but disgust.

I would like to just tell the Court that the – under jurisdiction, was the question of jurisdiction brought up with the Supreme Court in 1978 – 79? You – damn right, it was. I'm going to read just one paragraph: Moreover, the judgment below is being challenged because that the appellant contends that the trial court lacked jurisdiction to enter the judgment. It is well-established that lack of jurisdiction may be noticed at any time, *Tellier v. Zarnowski* – and if I haven't raised it enough times before, I'm certainly raising it today. I – I want to just stress the fact that – from *Karp v. Urban Development*, 162 CT 525: The issue on appeal to this court, therefore, whether the record shows the Superior Court to have lacked jurisdiction to consider the plaintiff's appeal. That issue will be determined according to the construction given to general statute A-132.

I got to say to this Court, I went through two condemnations. I went through every dirty trick in [10] the book. You name it, and they did it. And I got a special act through the legislature, because at that time I was not familiar with the law and relative to sovereign immunity, and etc., etc. Special Act 169, 170 in 1969 was passed, for damages. And that was the only thing that was before the court. And I'm saying to this Court, that there's no way in hell that the State of Connecticut can proceed with a judgment under my tort action. You cannot make a contract out of a tort action.

Following up on *Karp v. Urban Development*, CT statutes 8-29 which governs the procedures of the defendant, requires that the statement be filed with the clerk of the Superior Court.

JUDGE LAVERY: You have five minutes left, sir.

MR. SIMMONS: Five minutes left? Thank you, Your Honor. There was no statement of compensation.

JUDGE LAVERY: Did you want to save the five minutes for rebuttal, Mr. Simmons?

MR. SIMMONS: Yes.

JUDGE LAVERY: Well, then, you'd better stop now, sir.

MR. SIMMONS: Thank you.

MR. LOHR: Good afternoon, Your Honors. May it please the Court, my name is Erik Lohr. I'm a special deputy assistant state's attorney at the appellate bureau of the office of the chief state's attorney, [11] and I represent the state.

JUDGE LAVERY: Mr. Lohr, when the trial for the court began on April 8th, the state – the prosecutor filed a substituted information, adding two charges, interfering and disorderly.

MR. LOHR: Yes.

JUDGE LAVERY: Was there ever a long form filed, was there ever –

MR. LOHR: No, Your Honor.

JUDGE LAVERY: I know that there was no bill of particulars, he never asked –

MR. LOHR: No, Your Honor.

JUDGE LAVERY: – but there was never a breakdown of what the state claimed constituted the disorderly as opposed to the breach, or the interfering as opposed to either of the other two. Is that correct?

MR. LOHR: That's correct, Your Honor.

JUDGE LAVERY: All right.

MR. LOHR: There was – there was never a bill of particulars. There was never a motion for articulation after the fact. There was never anything that limited what Mr. Simmons was charged with or convicted under, except for the trial court's saying that with regard to the breach of peace it was subsection 1. With regard to the disorderly conduct, it's unclear from the record.

JUDGE LAVERY: But isn't disorderly a lesser [12] included offense of breach of the peace?

MR. LOHR: It can be, Your Honor. And simply looking at the charging information, which, in this case, was the short form information, it was simply the two statutes that were charged. And – and the statutes themselves, breach of peace has six subsections, and disorderly conduct has seven. There could be any mix or match under – under either – or both of those two statutes.

JUDGE LAVERY: Well, we know which subsection the breach of the peace is, don't we?

MR. LOHR: Yes, Your Honor. That's subsection 1, because that's what the trial court found him guilty

under. But that's after the fact, that's a substantive determination. Before the fact, simply looking at the charging information, and looking to –

JUDGE LAVERY: Yes, but I – but lesser included offenses can mean after all the evidence is put in, isn't it?

MR. LOHR: Yes, Your Honor. But in this case, we don't know. There was no motion for articulation. There was – there was nothing to – to expound upon which particular subsection of the disorderly conduct statute Mr. Simmons was convicted under. So, it's unclear.

JUDGE LAVERY: But, some of this is sophisticated and he's a pro se. You know, there is a lot of law [13] that disorderly can be a lesser included offense of the breach of peace. Isn't that true?

MR. LOHR: It can be, Your Honor. But –

JUDGE LAVERY: Right. You just don't believe it is, in this instance?

MR. LOHR: No, Your Honor. I'm sorry.

JUDGE LAVERY: All right. No, that's fine. No, no.

MR. LOHR: It could have been, because as the Court is aware, disorderly conduct and breach of peace, subsection 1, under both statutes, are essentially identical, with the exception of, breach of peace requires in a public place, and disorderly conduct does not. But there are other subsections, for instance, subsection 2 under the disorderly conduct statute, which – excuse me, one second – which reads "By disorderly – by offensive or disorderly

conduct – and the mens rea for both of them is identical, I'll – that's clear – subsection 2 of disorderly conduct is "By offensive or disorderly conduct, the defendant annoys or interferes with another person". Easily, that could have been found here, simply based on his conduct towards both of the Guardsmen.

JUDGE FOTI: Which is different that engaging in fighting or violent, tumultuous, or threatening behavior in a public area.

MR. LOHR: Yes, Your Honor. And, in fact, on page 6 of the defendant's brief, he concedes that waving [14] one's arms while close enough to make physical contact with another, could be construed as a breach of peace. And Specialist Freemen, I believe it was, the driver of the Guardsman's vehicle, testified that – well, he said two things. One, he said that the defendant came 12 to 15 inches from the passenger side window – I'm sorry, from the driver's side window of the vehicle. And the other was "He came right up to the window". And, surely, either one of those is close enough to make physical contact. That would be sufficient to constit – to support the breach of peace. The disorderly conduct could come afterwards, based on his conduct in approaching, yelling and screaming, expletives and so forth. Either of those would support a subsection 2 violation of the disorderly conduct statute.

Unless the Court has any further questions, the state would rely on its brief with respect to that.

JUDGE LAVERY: Thank you, sir.

MR. LOHR: Thank you, Your Honors.

JUDGE LAVERY: Counsel, you got five minutes. Or Mr. Simmons, I'm sorry. You have five minutes, sir.

MR. SIMMONS: Your Honors, Mr. Simmons, back again.

JUDGE LAVERY: Yes.

MR. SIMMONS: Mr. Lohr, says approached this fella within 12, 15 inches of the driver's side. Keeping in mind that this vehicle had entered the property, had [15] made a U-turn and was exiting the property, so that the driver's side was on the other side. I was approaching the vehicle from the passenger side.

Irrespective of that, I mean, here's planes roaring and I'm motioning "Out of here", and I have that right to mo – what we're trying to do here is to stretch this thing so – way the hell out of proportion so "Hey, this guy's dangerous. Look out. He's going to – he's going to – he's going to pop somebody".

He – Mr. Lohr's, called my attention to a – a citation that he might use today. State of *Connecticut v. Paul* Crudup, and I sat in court here yesterday for the – listen to the three cases that were on in the afternoon, to get myself a little familiarized with the court procedures again, and I went over to the library. So, I got home; I found the message. I went back to the UConn library again to get this – get this citation that he said he would rely on. But, apparently, he doesn't want to put it – put it before the Court. But, I'm going to put it before the Court, because I read it, and it says this fella went in to somebody else's territory, and says "I'm going to pop you". Obviously, a case like that is a – is a case for the courts, and a case for conviction, versus "Hey, you two fellas, out of here". Am I supposed to tie my hands behind my back? Or am I pointing at them two, "Out of here". I have every [16] right, Your Honors, and under the constitution, first

amendment of free speech to order these fellas – these trespassers off the property. Trespassers, because they – they don't belong there.

Also, in the – in the brief, there's a section on ropes. I'm not supposed to use a rope on any part of the property. I can do what I want with that property. I have a purpose for putting the rope across – to restrict people from using the whole lot. If there's a 5-acre parcel, and I only want to let them utilize one half and acre, an acre, I stretch a rope across. I have that right. Who are they to tell me that I can't – I'm putting up a rope that they can't – so that the National guard can't go and drive all over my property. The rope was there for everybody – everybody – restrict from going toward the back part of the property. There's no need for it. There's – and there's a purpose for it. In this day and age of drug dealings, and other kinds of activity – illicit activities, I – I have a light that lights up the area – 1000 watt flood-light to help keep matters in orders there. And a rope was there for a purpose. And to have them – the state police – pick on me and have them put it in their – in their brief that I am putting a rope across. Who the hell are they to tell me that I can't put a rope on my property, anywhere I want, anyway I want, etc., [17] etc., etc. And this gets on the border – it's on the ridiculous.

The other – the other matter is, Your Honors, this – this is a – it involves Federal property, Federal installations. And there's certain rules that you got to go by when – when you have that type of situation. Automatically, Federal law comes into the picture. That's why Congress passed the Uniform Rail Property Acquisition Act in 1971. And – and that applies to the states, and as a result of that action, Connecticut legislature passed 48-17a, whereby, if you fail in condemnation once, or twice, I'm

entitled to my attorney's fees, engineering fees, etc., etc., costs and whatnot.

I have not had one hour, I have not had one day of hearing. I – I have not been notified, or listed even, to take any of that property, by – by the – and there has not been any action by the Connecticut Department of Transportation since 1972, in any way, shape or form, to take that property. And I say to this Court, there's got to be some kind of an action for this Appellate Court, or the Supreme Court, to be acting. They cannot act, should not act, with no case before the Court.

JUDGE LAVERY: Thank you, sir. Your time is up. Thank you both.

MR. SIMMONS: Thank you, Your Honors.

EXHIBIT 8

Law Offices
Jason E. Pearl
19 SOUTH HIGH STREET
POST OFFICE BOX 183
New Britain, Connecticut 06050

Jason E. Pearl Telephone

Kenneth J. Speyer (203) 229-1603

August 30, 1979

The Honorable John Daly
Superior Court
95 Washington Street
Hartford, CT

Re: David Salzman
vs: August Simmons
Docket No. 218559 8

Dear Judge:

First of all, welcome back from vacation.

While you were away on August 13 I received a telephone call from one of the assistant clerks advising me that if I wished to reargue my Motion For Turnover dated July 25, 1979, I would have to claim it for the Short Calendar. I was rather taken back by this announcement inasmuch as my file indicates that you granted the motion in open court on July 27, 1979. I recall you speaking to me briefly subsequent to that time indicating that you were going to meet with Mr. Abraham with respect to the order, but you did not indicate to me that you had vacated your prior decision. I would assume that for me to be put into the position of

having to "reargue" your prior decision would have to be revoked. Until that happens, I really do not know what there is for me to argue.

I would be most appreciative of your guidance in this matter.

Yours very truly,

/s/ Jason E. Pearl
Jason E. Pearl, Esq.

JEP/ck
1888

[Hearing set up for
9/12/79 at 2:00 p.m.]

EXHIBIT 8(a)

Linda

Based on SHELTON v WOLTHAUSEN, 80C 599 (furnished by Lucian) I would have no authority to grant this motion. Will you kindly notify Jason Pearl regarding this & if he wishes to argue the matter put it down.

Thanks.

APPENDIX 9

STATE OF CONNECTICUT

LOUIS SHAPIRO
STATE REFEREE

SUPREME COURT BUILDING
P.O. DRAW N. STATION A
HARTFORD, CONN. 06106

July 18, 1980

Jason E. Pearl, Esquire
19 South High Street
P.O. Box 183
New Britain, CT 06050

Re: No. 16 38 75
Augustus J. Simmons v. Horace B. Wetherell, et al

Dear Mr. Pearl:

This will acknowledge receipt of your Motion for Disbursement of Funds by Clerk dated July 16, 1980 and received by me this morning.

Since your phone call to me, I am not certain as to what steps should be taken in order to make disbursement as requested by you. Since the amount attached by Atty. Salzman et als was accomplished by bringing suit, it would seem to me that before distribution could be made, that this claim be reduced to a judgment. If there is a more expeditious way to proceed, I would appreciate hearing from you as soon as possible.

I'm also concerned about the order of distribution since the land records, according to your memorandum attached to your letter, show a list of encumbrances prior to the date of the Salzman attachment.

Also, in view of the many complications which I anticipate, would it not be better to have this issue handled

by the Superior Court? I am not equipped, as a referee to give notice to the various creditors which I believe may be necessary. It would seem that your motion could be handled properly by the Superior Court.

Very truly yours,

Louis Shapiro
State Referee

LS:mcd

cc: Ronald Cassidento, Esquire
William A. McQueeney, Esquire

EXHIBIT 9(a)

Sec. 20-5. Lodging Papers in Cause Affecting Land

In all causes relating to an interest in land, tried by a judge, the judge shall lodge the file and papers in the cause, with a memorandum of the judge's decision, with a clerk of the court in the judicial district in which the land affected is located, who shall thereupon become their lawful custodian.

(P.B. 1978-1997, Sec. 450.)

Sec. 450. Lodging Papers in Cause Affecting Land

In all causes relating to an interest in land, tried by a judge, the judge shall lodge the file and papers in the cause, with a memorandum of his decision, with a clerk of the court in the judicial district in which the land affected is located, who shall thereupon become their lawful custodian.

(P.B. 1963, Sec. 371.)